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Supreme Court, U. S.
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APPENDIX

In The

Supreme Court of the United States

October Term, 1971

No. 71-364

JOAN S. MAHAN, ET AL., *Appellants,* v. HENRY E. HOWELL, JR., ET AL., *Appellees.*

EDGAR A. PRICHARD, ET AL., *Appellants,* v. CLIVE L. DUVAL, II, ET AL., *Appellees.*

EDGAR A. PRICHARD, ET AL., *Appellants,* v. STANFORD E. PARRIS, ET AL., *Appellees.*

No. 71-373

CITY OF VIRGINIA BEACH, *Appellant,* v. HENRY E. HOWELL, JR., ET AL., *Appellees.*

CITY OF VIRGINIA BEACH, *Appellant,* v. STANFORD E. PARRIS, ET AL., *Appellees.*

CITY OF VIRGINIA BEACH, *Appellant,* v. CLIVE L. DUVAL, II, ET AL., *Appellees.*

No. 71-553

Appellants, v. EDGAR A. PRICHARD, ET AL., *Appellees.*
WILLIAM S. THORNTON, ET AL.,

Appeal from the United States District Court
for the Eastern District of Virginia

PRELIMINARY STATEMENT

The three appeals in which probable jurisdiction has been noted, arise from the 1971 Virginia reapportionment acts redistricting the State legislative seats in both the Senate and House of Delegates of the General Assembly of Virginia. The cases below were styled as follows: Howell, et al. v. Mahan, et al.; DuVal, et al. v. Prichard, et al.; Parris, et al. v. Prichard, et al. The *Howell* case attacks Senate reapportionment and the *DuVal* and *Parris* cases attack the House of Delegates legislative reapportionment.

The City of Virginia Beach and William S. Thornton, appellants in the other cases granted an appeal, (Nos. 71-373, 71-553) were intervenors below on behalf of defendants (Virginia State Board of Elections) and plaintiffs respectively.

The instant Appendix is divided into three parts relating to the (1) House redistricting (2) Senate redistricting and (3) Voting Rights Act aspects as raised in the *Thornton* appeal.

Material formerly submitted in the "Joint Appendix of the City of Virginia Beach and Virginia State Board of Elections—Joan S. Mahan, et al." filed with the Jurisdictional Statements is not again being reproduced but is incorporated herein by reference and the table of contents set forth as follows:

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ANTHONY F. TROY
Assistant Attorney General

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HOUSE OF DELEGATES REDISTRICTING

EDGAR A. PRICHARD, MEMBER,

STATE BOARD OF ELECTIONS, ET AL.,
Appellants,

v.

CLIVE L. DUVAL, 2D. ET AL.,
Appellees.

EDGAR A. PRICHARD, MEMBER,
STATE BOARD OF ELECTIONS, ET AL.,
Appellants,

v.

STANFORD E. PARRIS, ET AL.,
Appellees.

DOCKET ENTRIES

No. 71-364

1971

Mar. 22—Complaint, prayer for a three-judge court, and motion for temporary restraining order—filed.

Mar. 22—Summons issued and given to Marshal for service.

Mar. 29—Notification and Request for designation of Three-Judge Court—filed.

Mar. 29—Designation of Three-Judge Court filed and the Judges designated to hear the case are Honorable Albert V. Bryan, United States Circuit Judge, Fourth Judicial

1971

Circuit, and Honorable Robert R. Merhige, Jr. United States District Judge for the Eastern District of Virginia and Honorable Oren R. Lewis.

Mar. 29—Marshal's return on summons executed as to all defts.—filed.

Apr. 2—Answer filed by defts. Edgar A. Prichard, Joan S. Mahan, Ulysses P. Joyner, Jr., A. Linwood Holton & Andrew P. Miller. Copies to 3 judges.

Apr. 8—Petition of the City of Norfolk to intervene as a party defendant—filed.

Apr. 8—Affidavit supporting the City of Norfolk's petition for leave to intervene—filed.

Apr. 8—Notice re motion to intervene returnable 4-15-71 —filed.

Apr. 12—Copy of order entered by Judge Merhige consolidating this cause with Civ. 174-71 (Richmond Div.) and setting cases for trial in Richmond on 5-24-71—received. Order entered April 7, 1971.

Apr. 13—Order consolidating this action with Richmond case No. 174-71-R; setting May 24, 1971 as date of trial, etc., ent. and filed—copies to all counsel of record in each case & designated judges.

Apr. 16—Notice of taking depositions of Wm. H. Stanhagen, Millard C. Rappleyea and Carol Griffee—filed by plf.

Apr. 16—Answer of the intervenor, City of Norfolk, filed April 13, 1971.

Apr. 21—Copy of notice of taking depositions of Stanford E. Parris and Edmund D. Campbell—filed by defts.

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Apr. 23—Agreed to stipulation by all parties of G. Robt. House, Jr., City Manager of the City of Norfolk—filed.

Apr. 23—Copies of exhibits on behalf of the intervenor, City of Norfolk—received and filed.

Apr. 27—Petition for leave to intervene—filed by City of Va. Beach, Va.

Apr. 27—Notice of motion returnable 4-28-71 in Richmond in re petition of City of Va. Beach, Va. to intervene as a party deft.—filed.

Apr. 27—Exhibit marked "Intervenor's (City of Norfolk) Exhibit No. 1 in Deposition of Robt. Griffis—received.

Apr. 28—Order allowing City of Virginia Beach, Va. to intervene as a party defendant and directing that such intervention shall not serve to enlarge or extend any discovery cut-off dates or hearing date heretofore established—ent. by Judge Merhige & filed—copies to all counsel of record and to designated judges.

May 3—Affidavit supporting the City of Virginia Beach's petition to intervene—filed.

May 5—Testimony (copy) of James M. Thomson—filed.

May 13—Memorandum (J. Merhige)—filed.

May 13—Order in accordance with memorandum directing parties to file within seven days of date herein such memoranda as they deem appropriate & requesting the U.S. to file memorandum amicus curiae, etc., ent. and filed.

May 14—Brief of the Intervenor, City of Norfolk—filed.

May 17—Brief on behalf of the intervenor, City of Virginia Beach—filed.

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May 17—Brief on behalf of the Commonwealth—filed.

May 18—Brief on behalf of plaintiffs—filed.

May 20—Depositions of Wm. H. Stanhagen & Millard C. Rappleyla, Sr. & Carol Griffee—received.

May 21—Copy of Intervenor's, City of Norfolk, Findings of fact and Conclusions of Law—filed.

May 21—Memorandum of the Intervenor, City of Norfolk —filed.

May 21—Memorandum on behalf of the Commonwealth—filed.

May 24—Trial Proceedings: (in Richmond—Judges Lewis, Bryan and Merhige) Appearances: Parties with counsel. Oral argument heard. Order handed down by panel as follows: (a) Trial of this suit is continued. (b) Primary election of State of Va. set for June 8 is postponed until Sept. 14, 1971. (c) That unless Va. adopts reapportionment legislation on or before June 14, 1971, this court shall proceed with the trial of this suit and thereafter formulate a plan of reapportionment within prescription of Voting Rights Act. (d) Court retains jurisdiction of case until further order.

May 24—Order on hearing ent. and filed.

June 2—Affidavit (copy) of Leslie C. Curdts, General Registrar of the City of Norfolk, filed.

June 16—Trial Proceedings: (in Richmond—Judges Lewis, Bryan and Merhige) Parties appeared by counsel. Case argued.

July 2—Opinion—filed.

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July 2—Interlocutory order implementing findings of fact and conclusions of law stated in opinion—entered and filed.

July 13—Notice of appeal filed by defts., Joan S. Maham, U. P. Joyner, Jr. and Edgar A. Prichard, Members, Va. State Board of Elections, (defts. Linwood Holton, Governor of Virginia, & Andrew P. Miller, Atty. Gen. of Va. having been deleted as party defts.) from interlocutory order of 7-2-71.

July 13—Motion for stay of judgment pending appeal filed by deft. (above named.)

July 14—In Open Court: Lewis, J. Appearances: Parties and by counsel. Defts'. motion for stay of order of this Court dated July 2, 1971, argued. Motion denied. Order denying stay entered—filed, in open court. Copies sent.

Aug. 2—Notice of appeal (cross) filed by pltfs. Copies sent.

Aug. 3—Undertaking for costs (appeal) in amt. of $250 filed by pltfs.

DOCKET ENTRIES

No. 71-373

1971

March 8—Complaint filed March 5, 1971, and summons issued March 8, 1971. MLS

March 10—Order notifying and requesting Judge Haynsworth to designate two judges to form a three-judge court in action; ent 3-10-71 and filed. Copy certified to Judge Haynsworth and counsel of record. (LG)

March 15—Designation for Three-Judge Court; Albert V. Bryan and John A. MacKenzie to sit with Robert R. Merhige, Jr., rec'd and filed. MLS

March 16—Petition to intervene rec'd from James Thompson. pv

March 16—In Open Court: Merhige, J. Appearances: Parties and by counsel. Pre-trial conference held. Tentative dates set: Opening Briefs by: Pltf: 5-3-71 Deft: 5-14-71. Pltf's rply: 5-19-71. Exhibits to be filed with clerk at Richmond by 4-27-71. Plaintiff's reply to deft's answers to be filed within 7 days after filing of answers. Trial date set for May 24, 1971. Copies of all pleadings to be sent to all counsel, and each judge. Cut off on discovery: Plaintiff: 4-17-71. Deft: 4-27-71.

March 17—Marshal's return on summons as to all defendants listed. JP

March 17—Pre-trial Order entered, filed. Copies mailed all counsel of record. pv.

March 25—Plaintiff's Exhibit No. 2 Filed. LG

1971

March 29—Petition for leave to intervene with supporting affidavit, filed by proposed intervenor, City of Norfolk. LG

March 29—Notice of motion to intervene for 4-14-71, 9:45 A.M., filed by City of Norfolk. LG

March 29—Answer of City of Norfolk to intervening petition of Thomson, filed. LG

March 29—Answer of City of Norfolk to plaintiffs' complaint, filed. LG

April 1—Answer of defts Rappleyea, Short & Jasper rec'd, filed, pv.

April 2—Motion to consolidate this case with C. A. 111-71-Alex., Parris et al. v. Prichard et al., filed by deft. members of State Board of Elections. MLS

April 2—Answer of defts. Prichard, Mahan, Joyner, Holton and Miller, filed MLS

April 7—Order consolidating Civil Action No. 111-71-A, Stanford v. Parris, et al. with this case for trial, entered, filed. Copies mailed counsel of record. pv.

April 7—Order filing petitions to intervene, with leave to all parties to file within 15 days any replies deemed necessary, entered, filed, pv. Copies mailed all counsel of record. pv.

April 7—Intervening petition of James M. Thomson, filed. PPV

April 16—Notice to take depositions of Dr. Conrad E. Tarbeau filed by defts. MLS

April 21—Notice to Take de bene esse deposition of R. J. Griffis, 4-23-71, filed defts— G

1971

April 23—Answer to Intervening Petition, filed by defts. (LG)

April 23—Copy of Exhibits on behalf of intervenor, City of Norfolk, filed. (LG)

April 23—Stipulation by all parties of G. Robert House, Jr., City Manager of City of Norfolk, filed. (LG)

April 27—Petition for leave to intervene filed by City of Virginia Beach. MLS

April 27—Notice of motion to be allowed to intervene filed by City of Va. Beach, MLS

April 27—Exhibit marked "Intervenor's (City of Norfolk) Exhibit No. 1 in Depositions of Robert Griffis" rec'd from Assistant City Atty Tayloe of Norfolk. MLS

April 28—Depositions taken 4-8-71 of Lindberg, et al., recd. and filed on behalf of pltfs. (LG)

April 28—Order allowing City of Virginia Beach be made a defendant and to file pleadings; ent. 4-28-71 & filed. Copies mailed counsed and Judges. (LG)

April 28—Exhibits Nos. 1 through 7, filed by defts. No. 8 to be forwarded. (LG)

April 29—Exhibits 1-30 filed by plaintiff. pv

May 3—Affidavit supporting the City of Virginia Beach's Petition to Intervene, filed. MLS

May 3—Plaintiff's trial brief rec'd, filed. pv.

May 5—Deft's Exhibit No. 8 filed. (LG)

May 10—DeBenne Esse deposition of Robert J. Griffis rec'd. pv

1971

May 10—Deposition of Dr. Conrad F. Taeuber rec'd. pv.

May 13—Memorandum of the court filed.

May 13—Order directing each of the parties hereto to file within seven days of this date such memoranda as they deem appropriate concerning the matters referred to in above memorandum; requesting the United States to file such memorandum as amicus curiae, ent. 5-13-71. Copies mailed counsel of record. MLS

May 14—Brief, Title of Citations, and Preliminary Statement, filed by City of Norolk. MLS

May 14—Brief on Behalf of Intervenor City of Virginia Beach, filed.

May 17—Deposition of Robert B. Voight rec'd. pv.

May 14—Brief on Behalf of the Commonwealth of Va., filed. LG copies mailed to Alex. & Norfolk Clerk's Offices for their files.

May 17—Petition for Leave to Intervene, filed by atty. for W. S. Thornton, P. Howlette, J. M. Brooks, E. L. Slade & A. Brown. (LG)

May 18—Order that William S. Thornton et al be allowed to intervene in this cause; filing complaint in intervention; granting said plf. intervenors leave to file on or before May 21, 1971, such stipulations, exhibits and other documentary evidence going to the issues raised in their complaint; and shall file such memorandum in support of their proposed Findings of Fact and Conclusions of Law on or before May 20, 1971; all other parties are granted leave to file such responsive pleadings to the complaint as they deem appropriate on or before 5 P.M., May 21, 1971, ent. 5-18-71. Copies mailed counsel of record. MLS

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May 18—Complaint in Intervention filed. MLS

May 18—Notice of Motion to intervene filed by attorney for Lewis A. McMurran, Jr., Alan A. Diamonstein and T. V. Morrison, Jr.

May 18—Motion to intervene filed by Lewis A. McMurran, Jr., et al. MLS

May 18—Index to Defts' Exhibits filed. MLS

May 19—Depositions of Van Meter, Prichard, Leigh, Harris, Abramson, Bergheim, Miller, DuVall, Alexander, Stanhagen, Rappley & Griffis rec'd on behalf of pltfs. pv

May 20—Findings of Fact and Conclusions of Law, filed by Intervenor, City of Norfolk. LG

May 20—Memorandum of the Intervenor, City of Norfolk, filed. LG

May 20—Plaintiff-Intervenors' Response to the Court's Questions Concerning Section 5 of the Voting Rights Act, filed. JP

May 20—Plaintiffs' Proposed Findings of Fact, filed. LG

May 20 Special Memorandum in response to court order of 5-13-71, filed by plaintiffs. LG

May 20—Proposed Findings of Fact and Conclusions of Law filed by plaintiff-intervenors. MLS

May 21—Volume II of Exhibits Submitted on Behalf of Plfs. filed by plfs. MLS

May 21—Reply Brief on behalf of plaintiffs, filed. MLS

May 21—Memorandum of Law in Support of Black Plaintiff-Intervenors' Complaint in Intervention, filed. LG

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May 21—Answers of defts. Joan S. Mahan et al. to complaint and intervention of plf. intervenors, William S. Thornton et al. filed by counsel, Atty Gen. of Va. MLS

May 21—Memorandum on behalf of the Commonwealth, filed. MLS

May 21—Memorandum for the United States as Amicus Curiae, filed. MLS

May 24—Defendant's proposed finding of facts and conclusions of law, filed.

May 24—Brief on behalf of Intervenors Lewis A. McMurran, Jr., Alan A. Diamonstein, and T. V. Morrison, Jr., filed. MLS

May 24—Black Pltf-Intervenors list of exhibits filed. LG

May 24—Three Judge Court: Bryan, MacKenzie, Merhige, Judges: Appearances: Parties and by counsel. Oral argument heard. Judgment of the panel that: Trial of suit is continued. (b) Primary election of State of Va. set for June 8 is postponed until Sept. 14, 1971. (c) That unless Va. adopts reapportionment legislation on or before June 14, 1971, this court shall proceed with trial and thereafter formulate a plan of re-apportionment within prescription of Voting Rights Act. (d) Court retains jurisdiction of cases until further order.

May 24—Order of Three Judge panel entered, filed as outlined above. pv

May 24—Motion to amend complaint in intervention and order allowing same entered, filed. pv

June 2—Affidavit of Leslie C. Curdts, General Registrar of the City of Norfolk, filed. MLS

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June 2—Motion for court to amend court order, extending until 6-24-71 that time for General Assembly shall enact new reapportionment legislation; that any still unresolved issues raised by pending litigation be set down for hearing on 6-28-71, filed by Joan S. Mahan et al., June 1, 1971. MLS

June 2—Order denying defts' motion to amend May 24th Order; ent 6-2-71 and filed. Copies mailed Judges and all counsel of record. LG

June 2—Plaintiff-Intervenors' Opposition to defts' motion to amend, filed. lg

June 8—Motion for Summary Judgment, filed by defts. Prichard, Mahan, Joyner, Holton and Miller.

June 9—Original and 1 copy of reporter's transcript of proceedings of May 24, 1971 rec'd, filed. pv.

June 9—Plfs' Motion in CA 174-71-R for Modification of May 24, 1971 Order and to fix trial date, filed by pltfs in CA 174-71-R. LG

June 14—Order setting date for hearing for Wed. 6-16-71, 10:30 A.M.; ent. 6-11-71 and filed. Copies deld. to Judge. LG

June 15—Black Pltf-Intervenors' Opposition to defts' mot. for summ. judgment, filed. LG

June 15—Black Pltf-Intervenors' Response to Pltfs' Motion to modify Order & Fix trial date, filed

June 15—Black Pltf-Intervenors' Motion to proceed as in Order of 5-24-71, filed. LG

June 16—Motion by defts. to amend pre-trial Order of 3-17-71, filed. LG

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June 16—Before Three-Judge Court: (heard with CA-111-71-A and 105-71-N). Parties appeared by counsel. Case argued. gb

June 17—Evidentiary statements on behalf of Blank Plaintiff-Intervenors rec'd, filed. pv.

June 18—Defts' Response to evidentiary statements on behalf of Black Plaintiff Intervenors, filed MLS (copies mailed Judges)

July 2—Interlocutory Order declaring reapportionment statutes of 1971 invalid; members of State Senate and House be elected from electoral districts in said opinion; that defts enjoined from conducting any of said elections in districts except those established in said opinion; Gov. and Atty. Gen. of Va. dropped as parties to actions; pltfs recover costs; jurisdiction retained for enforcement ent 1:00 P.M. July 2, 1971 and filed. Copies distributed. (LG)

July 2—Opinion filed 7-2-71 from Hon. Albert V. Bryan, Circuit Judge. Copies distributed. (LG)

July 13—Notice of Appeal to Supreme Court of United States, filed by Joan S. Mahan, U. P. Joyner, Jr. and Edgar A. Prichard, Members, Virginia State Board of Elections. gb

July 13—Motion for stay of judgment pending appeal filed by Joan S. Mahan, et al. gb

July 13—Copy of order denying motion for stay pending appeal and denying motion of Virginia Beach for rehearing, entered & filed July 13, 1971 (MacKenzie, J.) gb

1971

July 15—Notice of Appeal to Supreme Court of United States filed by intervenor defendant, City of Virginia Beach. gb

July 30—Notice of Appeal to Supreme Court of the U.S. filed by plf-intervenors. MLS

July 30—Notice of Appeal to Supreme Court of the U.S. filed by Robert L. Weinberg, pro se, 1000 Hill Bldg., Washington, D.C. 20006 gb

Aug. 3—Notice of Appeal from order of July 2, 1971, filed pro se by C. Stanley Pees, 314 N. Pitt St., Alexandria, Va. 22314 gb

Aug. 4—Notice of Appeal to Supreme Court of the U.S. filed by Edmund D. Campbell, pro se, 200 N. 16th St., Arlington, Va. 22216, from order entered July 2, 1971

Oct. 28—Designation of record on appeal by plaintiff-intervenors, filed gb

Dec. 10—Designation of Record on Appeal filed by defts. Joan S. Mahan, et al. MLS

COMPLAINT

Parris, et al. v. Pritchard, et al.

Complaint To Correct Unconstitutional Malapportionment Of The House of Delegates Of The Commonwealth Of Virginia

I

This Court has original jurisdiction of this action pursuant to 28 United States Code Section 1343(3) and the plaintiffs have a right to bring this suit pursuant to the

Civil Rights Act of the United States, 42 U.S. Code Sections 1983, 1988.

II.

Under the provisions of 28 U. S. Code Sections 2281 and 2284 special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state, whenever said application is based on the unconstitutionality of such statute. Plaintiffs also seek declaratory relief pursuant to the provisions of 28 U.S. Code Sections 2201 and 2202.

III

Plaintiffs and each of them are citizens of the United States and of the Commonwealth of Virginia and are registered and qualified voters in said Commonwealth and are entitled to vote for the members of the House of Delegates of the Commonwealth of Virginia.

The plaintiffs, and each of them, are duly elected incumbent members of the said House of Delegates of the Commonwealth of Virginia, and reside within the County of Fairfax, Virginia.

IV

The defendants and each of them are citizens of the United States and of the Commonwealth of Virginia and reside in said Commonwealth, and are sued in their representative capacities as hereinafter set forth.

A. Defendants Edgar A. Prichard, Joan S. Mahan, and Ulysses P. Joyner, Jr. are Members of the State Board of Elections of the Commonwealth, defendant Joyner being Chairman of such Board and defendant Mahan being secre-

tary thereof. As such, said defendants are charged with supervising and coordinating the work of City and County Electoral Boards, making rules and regulations for the conduct of elections, ordering the holding of primary elections, preparing forms and records for the registration of voters and performing other duties in respect to elections.

B. Defendant Linwood Holton is Governor and Chief Executive Officer of the Commonwealth, and under 28 U.S. Code Section 2284 must be notified of any action in a United States Court involving the enforcement of a state statute.

C. Defendant Andrew P. Miller is Attorney General of the Commonwealth, and as such is charged with the duty of assisting attorneys for the Commonwealth of any jurisdiction in which election laws have been violated and of doing all things necessary to enforce the election laws. Under 28 U.S. Code Section 2284 said defendant, as Attorney General of the Commonwealth, must be notified of any action in a United States Court involving the enforcement of a state statute.

D. The defendants Millard C. Rappleyea, Nancy D. Short, and Jones Jasper are the members of the Electoral Board of Fairfax County. As such, said defendants are charged with the duty of filing with the State Board of Elections a list of the names of candidates and of offices to be filled, preparation of ballots, preparing and having custody of voting machines, the conduct of elections in their county, canvassing the results thereof, making out certificates of eleceion for the persons having the highest number of votes for any office, including the House of Delegates, and other duties in connection therewith.

V

Plaintiffs are now denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States. Plaintiffs bring this action on their own behalf and on behalf of all of the registered and qualified voters of their respective Counties and Cities, and on behalf of all voters in Virginia who are similarly situated. Plaintiffs seek a declaration of their rights and a declaration of the validity or invalidity of the act of the Commonwealth which apportions the members of the House of Delegates among the counties and cities of Virginia. They further seek such injunctive relief as may be proper to assure them and all other voters of Virginia the free and equal franchise and the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States and which rights are now being denied them by the defendants under a certain unconstitutional statute, as hereinafter more particularly set forth.

VI

Sections 40 through 43 inclusive of the Constitution of Virginia applicable at the time of the filing of this suit, provide that the legislative power of the Commonwealth shall be vested in a General Assembly which shall consist of a Senate and House of Delegates (Section 40); that the House of Delegates shall consist of not more than one hundred and not less than ninety members who shall be elected biennially by the voters of the several House districts (Section 42); and that a reapportionment of the Commonwealth into House districts shall be made in the year 1932 and every ten years thereafter (Section 43).

VII

The revised Constitution of Virginia which was agreed to by the General Assembly at the 1969 special session and the 1970 regular session and was approved by the people of Virginia in a referendum held November 3, 1970, and which becomes effective on July 1, 1971, except as provided in its "Schedule," provides in Article II, Section 6, that members of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly; that every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as practicable, representation in proportion to the population of the district; and that the General Assembly shal lreapportion the Commonwealth into electoral districts in accordance with this section in the year 1971 and every ten years thereafter. Section 5 of the Schedule to the revised Constitution provides that the General Assembly shall convene at the Capitol on January 6, 1971, in special session, shall enact such laws as may be deemed proper, and shall reapportion the Commonwealth into electoral districts in accordance with the above Article II, Section 6, of the revised Constitution.

VIII

Pursuant to provisions of the said Constitution of Virginia, the General Assembly did in 1962 apportion the Commonwealth into separate House Districts. In 1964 the 1962 apportionment act was amended. By Section 24.1-12 of the Code of Virginia enacted in 1970 the provisions of the 1962 apportionment act, as amended in 1964, were continued in effect, dividing the Commonwealth into sixty-two House districts, whose respective locations and number of Delegates are shown on Exhibit A annexed.

IX

The apportionments set forth in Exhibit "A" hereto annexed are the ones hitherto effective in the Commonwealth of Virginia. In the special session of the General Assembly of Virginia held in January and February of this year the General Assembly purported to repeal the above Section 24.1-12 and to add a new Section 24.1-12.1 reapportioning the House of Delegates into various districts. Said Section 24.1-12.1 was added by House Bill No. 63, which was signed by the Governor and became effective, subject to review by the Attorney General of the United States, on March 1, 1971. By House Bill 63, a copy of which is annexed as Exhibit "B," the Commonwealth is divided into fifty-two House districts, whose respective locations and number of Delegates are shown in said act. Also annexed as Exhibit "C" is a list showing the location and population (final 1970 U.S. Census figures) of said fifty-two new House districts as thus reapportioned by the General Assembly, the number of seats per district, the population per seat, the percentage by which each seat varies above or below the optimum population of 46,485 persons per seat, and the number of persons by which each seat is more than five percent above or below said optimum population per seat.

X

Section 24.1-174 of the Code of Virginia, as amended by the General Assembly at the 1971 special session, provides that primaries for the nomination of candidates for offices to be voted on at the general election on November 2, 1971, including candidates for the House of Delegates, shall be held on June 8, 1971, except that primaries for the nomination of candidates for county Boards of Supervisors

shall be held on September 14, 1971. Under Sections 24.1-184, 185 and 186, all primary candidates must file declarations of candidacy and appropriate petitions with party officials not later than sixty days before the primary i.e. not later than April 9, 1971. Under Section 24.1-172 of the Code, a party selecting a nominee for the House of Delegates, by any method other than direct primary must do so within the thirty days immediately preceding the primary date of June 8, 1971.

XI

Plaintiffs aver that said 1971 House reapportionment act embodied in Code section 24.1-12.1 invidiously discriminates against the plaintiffs and all other voters of the districts in which plaintiffs reside and against the voters of other House Districts in the Commonwealth, because such act creates election districts which have substantial and constitutionally impermissible variations of population:

A. The populations of the fifty-two new House districts, according to final 1970 census figures, vary from a population of 50,964 per House seat, which is 9.6% above the optimum population of 46,485 per House seat (Sixteenth district), to a population of 43,319, which is 6.8% below the optimum (Twelfth district.) The difference in population between the largest and smallest House seats is 7,645 or 16.4%.

B. House districts containing twenty-seven out of one hundred members of the House of Delegates have populations which are at least 5% above (48,809) or at least 5% below (44,161) the optimum population of 46,485.

XII

Plaintiffs, as citizens of the United States and as citizens and registered and qualified voters of the Commonwealth of Virginia, have a right to vote for members of the House of Delegates of the Commonwealth and to cast votes that are equally effective with the votes of every other citizen of said Commonwealth; but plaintiffs aver that by virtue of the invidious discrimination practiced by the General Assembly in the reapportionment statute hereinbefore referred to the votes of the plaintiffs are not as effective as the votes of voters residing in other House districts of the Commonwealth. As instances of such invidious discrimination, plaintiffs cite the following:

A. Every House district in Northern Virginia, comprising the Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, and Twenty-third House districts which include Fairfax, Arlington, Prince William and Loudoun Counties and Fairfax, Falls Church and Alexandria Cities, are under-represented. Each House seat in each such district has a population per seat ranging from 47,537 to 49,417, which is 2.3% to 6.3% above the optimum population per House seat of 46,485. Each House seat in Northern Virginia is under-represented an average of more than 4.3% per seat.

B. The Northern Virginia Counties and Cities set forth above have a total population of 921,237 persons according to the final 1970 census figures, which figure is 19.82% of the Commonwealth's total population of 4,648,494. Under said 1971 House reapportionment act, said Northern Virginia jurisdictions are allotted among them only nineteen House seats or 19% of a total of one hundred although under the 1971 Senate reapportionment act they

are allotted eight Senate seats or a full 20% of a total of forty, and under the 1971 Congressional reapportionment act (Code Section 24.1-4.1) they are allotted two Congressional seats or a full 20% of a total of 10.

C. The instances of invidious discrimination set forth above are particularly unfair and discriminatory in that said Northern Virginia Counties and Cities as an area comprise the fastest growing region in the Commonwealth. During the past decade they grew at an average rate of 46% as compared with a State-wide average of 17.2%. Growth rates varied from 5.7% for the City of Falls Church (population 10,772) to 51.3% for Loudoun County (37,150), 65.5% for Fairfax County (455,021), and 121.5% for Prince William County (111,102).

D. In contrast, the City of Norfolk with a population of 307,951 is given under said 1971 House reapportionment act seven House seats (Thirty-ninth district), each of which seats has a population of 43,933. Thus, the Norfolk district and each of such seven seats are overrepresented by 5.4%, although during the last decade Norfolk grew at a rate of only 1%, and although there are included in the total Norfolk population 36,000 naval personnel who are on U.S. Naval vessels overseas and are included in the Norfolk total only because their ships berth at the Norfolk Navy Yard. Many of these personnel undoubtedly reside elsewhere in the Commonwealth and in the United States.

E. In further contrast, the City of Chesapeake with a population of 89,580 is given under said 1971 House reapportionment act two House seats (Thirty-eighth district), each of which has a population of 44,790. Thus, the Chesapeake district and each of such seats are overrepresented by 3.6%. In addition, however, under said act

Chesapeake shares with the residents of the Cities of Virginia Beach and Portsmouth a third "floater" House seat (Forty-second district). Therefore, the residents of Chesapeake, who are mathematically entitled to 1.9 House seats, will under said act vote for and be represented by three Delegates holding said seats.

XIII

The fundamental principle relied upon in the creation of the said 1971 House reapportionment act and the House districts created by it was and is the desire of the General Assembly to adhere to the political and geographical boundaries of the various counties and cities within the Commonwealth of Virginia. That principle is violated in the 1971 House reapportionment act in only one instance in all of the existing political jurisdictions, both counties and cities, in the Commonwealth. That instance is that portion of the act which divides Fairfax County between two separate districts (Eighteenth and Nineteenth), with two separate five member districts each. All other House district boundaries conform to the geographical boundaries of existing political jurisdictions and permit the qualified voters therein to select qualified candidates from any portion of any such jurisdiction, thereby assuring any qualified person the opportunity to stand as a candidate for election to the applicable House district, and in addition, providing the maximum possible unification of political representation by those persons elected to the House of Delegates from any given jurisdiction.

XIV

Plaintiffs aver that the establishment by the said 1971 House reapportionment act of two five-member House dis-

tricts, one consisting of the portion of Fairfax County in the Tenth Congressional District and the Cities of Fairfax and Falls Church (Eighteenth) and the other comprising the portion of Fairfax County in the Eighth Congressional District (Nineteenth), will result in invidious discrimination against the plaintiffs and other voters residing in said districts.

XV

Plaintiffs aver that when the inequalities in the above mentioned reapportionment statute are considered, they result in a distortion of the constitutional requirements as established, defined and guaranteed by the Fourteenth Amendment to the Constitution of the United States, and that this distortion denies to plaintiffs the equal protection of the laws.

XVI

Plaintiffs aver that the constitutional requirements aforementioned can only be met by a revision of the 1971 House reapportionment act so as to reapportion House districts and seats among the Counties and Cities of Northern Virginia hereinbefore mentioned so as to allot them one additional House seat, and so as to order the establishment of all of Fairfax County as a single election district.

XVII

The special session of the General Assembly of Virginia which was held in January and February of this year, has adjourned until March 29, 1971, and then or thereafter may adjourn to a later date. In the meantime, there will be a primary election throughout the Commonwealth for members of the House of Delegates on June 8, 1971, and

unless the inequities herein complained of are corrected by this Court, the plaintiffs and all other voters similarly situated will be denied the equal protection of the laws in said elections. The defendants, unless prevented by this Court will perform their duties in the conduct of such elections in an unconstitutional manner.

Wherefore, plaintiffs pray:

1. That this Court may take jurisdiction of this controversy.

2. That a special three-judge court be called and impanelled to hear and determine this action and to declare the rights of plaintiffs in the premises to be as follows:

A. That the reapportionment of House districts in the Commonwealth of Virginia made by Section 24.1-12.1 of the Code of Virginia denies the plaintiffs and other voters of the Commonwealth similarly situated the equal protection of the laws, in contravention of the Fourteenth Amendment of the Constitution of the United States.

B. That said Section 24.1-12.1, as now in force, insofar as it applies to the County of Fairfax, is unconstitutional and void.

3. That upon final hearing of this action, the Court grant to the plaintiffs the following further relief:

A. That the defendants and each of them be permanently restrained and enjoined from furnishing forms for nominations, from receiving the names of candidates, notices of candidacy or petitions therefor, from ordering or conducting the Primary election scheduled to be held on June 8, 1971, or the General election

scheduled to be held on November 2, 1971, from certifying the results of either such election, and from taking any and all other steps with respect to the election of members of the House of Delegates of the Commonwealth of Virginia under and pursuant to Code Section 24.1-12.1, until there has been a further reapportionment of House districts in accordance with constitutional requirements as approved or promulgated by this Court.

B. That this Court notify the Speaker of the House of Delegates and the President of the Senate of the General Assembly of Virginia as well as the defendants herein, of its decision and opinion so that when the General Assembly reconvenes on March 29, 1971, or is called back into session at a later date it will be afforded a reasonable opportunity to enact legislation amending or repealing the 1971 House redistricting statute and reapportioning the several House districts and seats in accordance with constitutional requirements and the decision and opinion of this Court.

C. That this Court retain jurisdiction of this cause until such time as the General Assembly amends the 1971 House reapportionment act or enacts new reapportionment legislation in accordance with constitutional requirements; that it hold further hearings to determine the validity of such amended or new apportionment legislation; and that in the absence of enactment by the General Assembly of a valid new House reapportionment act, this Court retain jurisdiction in order to promulgate an apportionment plan for the House of Delegates which meets constitutional requirements.

D. That this Court enjoin, postpone, and defer the holding of the Primary election for members of the House of Delegates scheduled to be held on June 8, 1971, postpone and defer the deadline of April 9, 1971 for filing notices of candidacy and petitions therefor, and postpone and defer the date by which candidates for the House of Delegates selected by any method other than a direct primary must be selected or certified in accordance with the provisions of the applicable statutes of the Commonwealth of Virginia, until an appropriate date subsequent to a reapportionment of House districts in accordance with constitutional requirements as approved or promulgated by this Court.

4. That the plaintiffs may have such further and alternative relief as the nature of this action may require and this Court may deem proper.

/s/ STANFORD E. PARRIS
4085 Chain Bridge Road
Fairfax, Virginia 22030
Attorney for Plaintiffs
Tel. No. 591-7100

State of Virginia,

County of Fairfax, to-wit:

I, Stanford E. Parris, do hereby swear that I am one of the plaintiffs in the above action; that I have read the foregoing and annexed Complaint and know the contents thereof; and that the matters and things therein stated are true to the best of my knowledge, information and belief.

/s/ STANFORD E. PARRIS

Subscribed and sworn to before me this 22nd day of March, 1971.

/s/ PATRICIA M. CUNNINGHAM
Notary Public

My commission expires: July 23, 1974

Exhibit A

§ 24.1-12. Apportionment of Members of House of Delegates.—Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Chesapeake, two.

Second.—Accomack and Northampton, one.

Third.—Albemarle and Greene, one.

Fourth.—Charlottesville, one.

Fifth.—Alexandria, two.

Sixth.—Alleghany, Botetourt, Covington and Clifton Forge, one.

Seventh.—Amelia, Lunenburg and Nottoway, one.

Eighth.—Amherst and Lynchburg, one.

Ninth.—Arlington, four.

Tenth.—Augusta, Highland, Staunton and Waynesboro, two.

Eleventh.—Bedford County and the city of Bedford, one.

Twelfth.—Bland, Craig, Giles, Pulaski and Wythe, two.

Thirteenth.—Danville and Pittsylvania, one.

Fourteenth.—Brunswick and Dinwiddie, one.

Fifteenth.—Buchanan, one.

Sixteenth.—Russell and Dickenson, one.

Seventeenth.—Roanoke County, and the cities of Roanoke and Salem, one.

Eighteenth.—Campbell, one.

Nineteenth.—Caroline, King George, Essex and King and Queen, one.

Twentieth.—Fairfax County, and the cities of Alexandria, Fairfax and Falls Church, one.

Twenty-first.—James City, York and Williamsburg, one

Twenty-second.—Charlotte, Cumberland and Prince Edward, one.

Twenty-third.—Chesterfield and Colonial Heights, two.

Twenty-fourth.—Clark, Frederick and Winchester, one.

Twenty-fifth.—Danville, one.

Twenty-sixth.—Hampton, two.

Twenty-seventh.—Fairfax County, and the cities of Fairfax and Falls Church, six.

Twenty-eighth.—Fauquier, Warren and Rappahannock, one.

Twenty-ninth.—Fluvanna, Goochland, Louisa and Powhatan, one.

Thirtieth.—Franklin County and Floyd, one.

Thirty-first.—Gloucester, Mathews, New Kent, Charles City and Middlesex, one.

Thirty-second.—Carroll, Grayson and Galax, one.

Thirty-third.—Greensville, Surry, Sussex and Emporia, one.

Thirty-fourth.—Halifax and South Boston, one.

Thirty-fifth.—Hanover and King William, one.

Thirty-sixth.—Henrico, and city of Richmond, eight.

Thirty-seventh.—Henry, Patrick and Martinsville, two.

Thirty-eighth.—Isle of Wight, Southampton, and the city of Franklin, one.

Thirty-ninth.—Northumberland, Westmoreland, Lancaster and Richmond County, one.

Fortieth.—Newport News, three.

Forty-first.—Lee, Wise, and city of Norton, two.

Forty-second.—Loudoun and Prince William, two.

Forty-third.—Lynchburg, one.

Forty-fourth.—Madison, Culpeper and Orange, one.

Forty-fifth.—Mecklenburg, one.

Forty-sixth.—Montgomery and Radford, one.

Forty-seventh.—Nansemond and Suffolk, one.

Forty-eighth.—Nelson, Appomatox and Buckingham, one.

Forty-nine.—Norfolk City, seven.

Fiftieth.—Page, Rockingham, Shenandoah and Harrisonburg, two.

Fifty-first.—Petersburg, one.

Fifty-second.—Pittsylvania, one.

Fifty-third.—Portsmouth, three.

Fifty-fourth.—Prince George and Hopewell, one.

Fifty-fifth.—Virginia Beach, two.

Fifty-sixth.—Roanoke County, and the city of Salem, one.

Fifty-seventh.—Roanoke City, two.

Fifty-eighth.—Rockbridge, Bath and Buena Vista and Lexington, one.

Fifty-ninth.—Smyth, one.

Sixtieth.—Spotsylvania, Stafford and Fredericksburg, one.

Sixty-first.—Tazewell, one.

Sixty-second.—Washington, Scott and Bristol, two.

And the districts hereby created are hereby numbered one (1) to sixty-two (62) inclusive.

Exhibit B

Chapter

An Act to amend the Code of Virginia by adding a section numbered 24.1-12.1, and to repeal § 24.1-12 of the Code of Virginia, the new and repealed sections relating to apportionment of members of the House of Delegates. [H 63]

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 24.1-12.1 as follows:

§ 24.1-12.1. Apportionment of members of House of Delegates.—Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Dickenson, Lee, Wise, Scott and Norton, two.

Second.—Bristol, Smyth and Washington, two.

Third.—Russell, Tazewell and Buchanan, two.

Fourth.—Wythe, Grayson, Bland and Galax, one.

Fifth.—Craig, Giles and Pulaski, one.

Sixth.—Carroll, Floyd, Montgomery and Radford, two.

Seventh.—Roanoke City, two.

Eighth.—Roanoke County and Salem, two.

Ninth.—Franklin County, Rockbridge, Bedford County and Bedford City, and the cities of Lexington and Buena Vista, two.

Tenth.—Alleghany, Botetourt, Clifton Forge and Covington, one.

Eleventh.—Lynchburg, Amherst and Nelson, two.

Twelfth.—Campbell, one.

Thirteenth.—Patrick, Henry, Pittsylvania and Martinsville, three.

Fourteenth.—Danville, one.

Fifteenth,—Augusta, Highland, Staunton, Waynesboro and Bath, two.

Sixteenth.—Rockingham, Page, Shenandoah and Harrisonburg, two.

Seventeenth.—Frederick, Clarke, Fauquier, Warren and Winchester, two.

Eighteenth.—That portion of Fairfax County which lies in the Tenth Congressional District as described in § 24.1-4.1 Fairfax City and Falls Church, five.

Nineteenth.—That portion of Fairfax County which

lies in the Eighth Congressional District as described in § 24.1-4.1, five.

Twentieth.—Loudoun and Prince William, three.

Twenty-first.—Alexandria, two.

Twenty-second.—Arlington, three.

Twenty-third.—Alexandria and Arlington, one.

Twenty-fourth.—Hanover, Caroline, Stafford and Fredericksburg, two.

Twenty-fifth.—Culpeper, Rappahannock, Madison and Orange, one.

Twenty-sixth.—Albemarle, Greene, Fluvanna and Charlottesville, two.

Twenty-seventh.—Appomattox, Buckingham, Cumberland, Amelia and Prince Edward, one.

Twenty-eighth.—Charlotte, Halifax and South Boston, one.

Twenty-ninth.—Mecklenburg and Brunswick, one.

Thirteenth.—Petersburg, including those portions of Prince George and Dinwiddie Counties as described in the court's opinion in the annexation suit of Petersburg against the counties of Prince George and Dinwiddie, one.

Thirty-first.—Dinwiddie, excluding those portions encompassed within the thirtieth district, Lunenburg and Nottoway, one.

Thirty-second.—Louisa, Spotsylvania, Goochland and Powhatan, one.

Thirty-third.—Richmond City, five.

Thirty-fourth.—Henrico, three.

Thirty-fifth.—Henrico and Richmond City, one.

Thirty-sixth.—Chesterfield and Colonial Heights, two.

Thirty-seventh.—Prince George, excluding those portions encompassed within the thirtieth district, and Hopewell, one.

Thirty-eighth.—Chesapeake, two.

Thirty-ninth.—Norfolk, seven.

Fortieth.—Virginia Beach, three.

Forty-first.—Portsmouth, two.

Forty-second.—Virginia Beach, Chesapeake and Portsmouth, one.

Forty-third.—Nansemond and Suffolk, one.

Forty-fourth.—Southampton, Franklin City and Isle of Wight, one.

Forty-fifth.—Greensville, Emporia, Sussex, Surry, Charles City and New Kent, one.

Forty-sixth.—Accomack and Northampton, one.

Forty-seventh.—King George, Westmoreland, Northumberland, Richmond County and Lancaster, one.

Forty-eighth.—Essex, King and Queen, Middlesex, Gloucester, Mathews, and King William, one.

Forty-ninth.—Newport News, three.

Fiftieth.—Hampton, two.

Fifty-first.—James City, Williamsburg and York, one.

Fifty-second.—Hampton, James City, Williamsburg and York, one.

Reference to a county or city herein shall, unless otherwise specifically provided, be construed to mean the territory comprising such county or city as it exists on the effective date of this enactment notwithstanding future boundary changes by annexation, merger, consolidation or the voiding of boundary changes heretofore made final.

And the districts hereby created are hereby numbered one (1) to fifty-two (52), inclusive.

2. That § 24.1-12 of the Code of Virginia is hereby repealed.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

Exhibit C

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
First:					
Dickenson	16,077				
Lee	20,321				
Wise	35,947				
Scott	24,376				
Norton	4,001				
	100,722	+8.3	2	50,361	+1552
Second					
Bristol	14,857				
Smyth	31,349				
Washington	40,835				
	87,041	−6.4	2	43,521	−640
Third:					
Russell	24,533				
Tazewell	39,816				
Buchanan	32,071				
	96,420	+3.7	2	48,210	
Fourth:					
Wythe	22,139				
Grayson	15,439				
Bland	5,423				
Galax	6,278				
	49,279	+6.0	1	49,279	+470
Fifth:					
Craig	3,524				
Giles	16,741				
Pulaski	29,564				
	49,829	+7.2	1	49,829	+1020
Sixth:					
Carroll	23,092				
Floyd	9,775				
Montgomery	47,157				
Radford	11,596				
	91,620	−1.5	2	45,810	

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
Seventh:					
Roanoke City	92,115	−0.9	2	46,058	
Eighth:					
Roanoke Co.	67,339				
Salem	21,982				
	89,321	−3.9	2	44,661	
Ninth:					
Franklin Co.	26,858				
Rockbridge	16,637				
Bedford Co.	26,728				
Bedford City	6,011				
Lexington	7,597				
Buena Vista	6,425				
	90,256	−2.9	2	45,128	
Tenth:					
Alleghany	12,461				
Botetourt	18,193				
Clifton Forge	5,501				
Covington	10,060				
	46,215	−0.6	1	46,215	
Eleventh:					
Lynchburg	54,083				
Amherst	26,072				
Nelson	11,702				
	91,857	−4.2	2	45,929	
Twelfth:					
Campbell	43,319	−6.8	1	43,319	−842

COPY BOUND

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
Thirteenth:					
Patrick	15,282				
Henry	50,901				
Pittsylvania	58,789				
Martinsville	19,653				
	144,625	+3.7	3	48,208	
Fourteenth:					
Danville	46,391	−0.2	1	46,391	
Fifteenth:					
Augusta	44,220				
Highland	2,529				
Staunton	24,504				
Waynesboro	16,707				
Bath	5,192				
	93,152	+ .2	2	46,576	
Sixteenth:					
Rockingham	47,890				
Page	16,581				
Shenandoah	22,852				
Harrisonburg	14,605				
	101,928	+9.6	2	50,964	+2155
Seventeenth:					
Frederick	28,893				
Clarke	8,102				
Fauquier	26,375				
Warren	15,301				
Winchester	14,643				
	93,314	+0.4	2	46,657	
Eighteenth:					
Fairfax City	21,970				
Falls Church	10,772				
(Part) Fairfax County	213,767				
	246,509	+6.1	5	49,302	+493

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
Nineteenth:					
(Part) Fairfax County	241,254	+3.8	5	48,251	
Twentieth:					
Loudoun	37,150				
Prince William	111,102				
	148,252	+6.3	3	49,417	+608
Twenty-first:					
Alexandria	110,938	+2.3	2	47,537	
Twenty-second					
Arlington	174,284	+2.3	3	47,537	
Twenty-third:					
Arlington and Alexandria	285,222 (floater)	+2.3	1	47,537	
Twenty-fourth:					
Hanover	37,479				
Caroline	13,925				
Stafford	24,587				
Fredericksburg	14,450				
	90,441	−2.7	2	45,221	
Twenty-fifth:					
Culpeper	18,218				
Rappahannock	5,199				
Madison	8,638				
Orange	13,792				
	45,847	−1.4	1	45,847	

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
Twenty-sixth:					
Albemarle	37,780				
Greene	5,248				
Fluvanna	7,621				
Charlottesville	38,880				
	89,529	−3.7	2	44,765	
Twenty-seventh:					
Appomattox	9,784				
Buckingham	10,597				
Cumberland	6,179				
Amelia	7,592				
Prince Edward	14,379				
	48,531	+4.4	1	48,531	
Twenty-eighth:					
Charlotte	11,551				
Halifax	30,076				
South Boston	6,889				
	48,516	+4.4	1	48,516	
Twenty-ninth:					
Mecklenburg	29,426				
Brunswick	16,172				
	45,598	−1.9	1	45,598	
Thirtieth:					
Petersburg	36,103				
(Increased annex area)	9,000				
	45,103	−3.0	1	45,103	
Thirty-first:					
Dinwiddie	25,046				
Lunenburg	11,687				
Nottoway	14,260				
	50,993				

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
(Annexed loss—Dinwiddie)	−4,000				
	46,993	+1.1	1	46,993	
Thirty-second:					
Louisa	14,004				
Spottsylvania	16,424				
Goochland	10,069				
Powhatan	7,696				
	48,193	+3.7	1	48,193	
Thirty-third:					
Richmond City	249,621	−3.4	5	44,887	
Thirty-fourth:					
Henrico	154,364	−3.4	3	44,887	
Thirty-fifth:					
Richmond City and Henrico	(floater)	−3.4	1	44,887	
Thirty-sixth:					
Chesterfield	76,855				
Colonial Height	15,097				
	91,952	−1.1	2	45,976	
Thirty-seventh:					
Prince George	29,092				
Hopewell	23,471				
	52,563				
Annexed loss—Prince George	−5,000				
	47,563	+2.3	1	47,563	

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
Thirty-eighth, Fortieth, Forty-first, Forty-second:					
Chesapeake	89,580				
Virginia Beach	172,106				
Portsmouth	110,963				
	372,649	+ .2	8	46,581	
Thirty-ninth:					
Norfolk	307,951	−5.4	7	43,993	−168
Forty-third:					
Nansemond	35,166				
Suffolk	9,858				
	45,024	−3.2	1	45,024	
Forty-fourth:					
Southampton	18,582				
Franklin City	6,880				
Isle of Wight	18,285				
	43,747	−5.9	1	43,747	−414
Forty-fifth:					
Greensville	9,604				
Emporia	5,300				
Sussex	11,464				
Surry	5,882				
Charles City	6,158				
New Kent	5,300				
	43,708	−6.0	1	43,708	−453
Forty-sixth:					
Accomack	29,004				
Northampton	14,442				
	43,446	−6.5	1	43,446	−715

D CLOSE IN CENTER

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop./Seat	Numerical Variance/Seat Above 48,809 (+5%) or Below 44,161 (−5%)
Forty-seventh:					
King George	8,039				
Westmoreland	12,142				
Northumberland	9,239				
Richmond Co.	5,841				
Lancaster	9,126				
	44,387	—4.5	1	44,387	
Forty-eighth:					
Essex	7,099				
King & Queen	5,491				
Middlesex	6,295				
Gloucester	14,059				
Mathews	7,168				
King William	7,497				
	47,609	+2.4	1	47,609	
Forty-ninth:					
Newport News	138,177	— .9	3	46,059	
Fiftieth, Fifty-first. Fifty-second:					
Hampton	120,779				
James City	17,853				
Williamsburg	9,069				
York	33,203				
	180,904	—2.7	4	45,226	

* * *

ANSWER

Now comes the Attorney General of Virginia, Andrew P. Miller, as counsel for defendants Edgar A. Prichard, Member, State Board of Elections; Joan S. Mahan, Secretary, State Board of Elections; Ulysses P. Joyner, Jr., Chairman, State Board of Elections; A. Linwood Holton, Governor of Virginia; and Andrew P. Miller, Attorney General of Virginia, and in response to the Complaint filed herein answers and says:

First Defense

The Governor and Attorney General of the Commonwealth of Virginia do not threaten plaintiffs or any other person with the operation, enforcement or execution of any law, nor has a cause of action been stated against said defendants. The requirement that said defendants be served notice pursuant to 28 U.S.C. § 2284 is not sufficient basis to make them parties to the action. They are therefore neither a necessary nor a proper party to this suit and should be dismissed.

Second Defense

The Complaint fails to state a claim upon which relief can be granted.

Third Defense

This Court is without jurisdiction to entertain the instant suit inasmuch as it presents a non-justiciable question.

Fourth Defense

In response to the allegations in the Complaint, defendants:

(a) Deny the allegation of Paragraph I of the Complaint.

(b) Admit the allegations of Paragraphs II, III and IV of the Complaint, except that they deny that the Attorney General and Governor are necessary and proper parties.

(c) Deny the allegations of Paragraph V of the Complaint.

(d) Aver the allegations contained in Paragraphs VI, VII, VIII, IX and X of the Complaint are conclusions of law and do not call for an answer, except that defendants deny the relevancy of those facts in Paragraphs IX and XI relating to those House seats either five percent above or below the optimum population.

(e) Deny as to the remaining allegations in Paragraph XI of the Complaint that the act therein referred to creates substantial and constitutionally impermissible variations of population within its House Districts.

(f) Admit that all of the citizens of the Commonwealth of Virginia have an inherent right to cast votes the weight of which is as near as practicable to the weight of the vote of all other citizens of the Commonwealth of Virginia, but they deny that the reapportionment statutes adopted by the General Assembly in 1971 invidiously discriminate against the plaintiffs or any other citizens of the Commonwealth by denying them this right; and they further state that the allegations of sub-paragraph (c) of Paragraph XII of the Complaint are irrelevant to a consideration of the Complaint.

(g) With regard to the allegations of Paragraph XIII of the Complaint, defendants state that this is a matter of political policy to be determined by the Legislature of the

Commonwealth of Virginia and that such consideration is beyond the jurisdiction of this Court.

(h) Deny the allegations of Paragraphs XIV, XV and XVI of the Complaint.

(i) Admit the allegations of Paragraph XVII of the Complaint, except that defendants deny that any inequities in the reapportionment statute exist which would deny the plaintiffs and any other voters in the Commonwealth equal protection of the laws as the result of any elections held as a result of said statute, nor that they will conduct any elections pursuant to the said statutes in an unconstitutional manner.

Wherefore, having fully answered, and any allegations not answered are deemed to be denied, defendants pray that they be dismissed with their costs herein.

* * *

COMPLAINT

DuVal, et al. v. Prichard, et al.

Voters' Complaint To Correct Malapportionment Of The House Of Delegates Of The Commonwealth Of Virginia

I

This Court has original jurisdiction of this action pursuant to 28 U.S. Code Section 1343(3) and the plaintiffs have a right to bring this suit pursuant to the Civil Rights Act of the United States, 42 U.S. Code Sections 1983, 1988.

II

Under the provisions of 28 U.S. Code Sections 2281 and 2284 special provision is made for hearing causes of action

involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state, whenever said application is based on the unconstitutionality of such statute. Plaintiffs also seek declaratory relief pursuant to the provisions of 28 U.S. Code Sections 2201 and 2202.

III

Plaintiffs and each of them are citizens of the United States and of the Commonwealth of Virginia and are registered and qualified voters in said Commonwealth and are entitled to vote for the members of the General Assembly of the Commonwealth of Virginia. In particular:

A. Plaintiffs Clive L. DuVal, 2d, Adelard L. Brault, Robert C. Fitzgerald, Omer L. Hirst, William S. Hoofnagle, Augustus C. Johnson, Mary Ann Hurt, Joseph V. Gartlan, Jr., Kenneth A. Meiklejohn, James H. Burch, Jr., and John M. Wilkins are residents of Fairfax County. Plaintiff Gartlan is a resident of Lee District and Plaintiff Meiklejohn is a resident of Mount Vernon District within such County.

B. Plaintiff Hugo A. Blankingship Jr., is a resident of Fairfax City.

C. Plaintiffs Thomas G. Eastham, Lee M. Rhoads, and Edith R. Abramson are residents of the City of Falls Church.

D. Plaintiffs Joseph S. Wholey, Ira M. Lechner, Robert L. Weinberg, and Audrey S. Wyatt are residents of Arlington County.

C. Plaintiffs Melvin L. Bergheim, C. Stanley Dees, and Alice M. Leonard are residents of the City of Alexandria.

F. Plaintiff Charles L. Waddell is a resident of Loudoun County.

G. Plaintiff James G. Jewell is a resident of Prince William County.

Plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other voters similarly situated in the Commonwealth of Virginia.

IV

The defendants and each of them are citizens of the United States and of the Commonwealth of Virginia and reside in said Commonwealth, and are sued in their representative capacities as hereinafter set forth.

A. Defendants Edgar A. Prichard, Joan S. Mahan, and Ulysses P. Joyner, Jr. are Members of the State Board of Elections of the Commonwealth, defendant Joyner being Chairman of such Board and defendant Mahan being secretary thereof. As such, said defendants are charged with supervising and coordinating the work of City and County Electoral Boards, making rules and regulations for the conduct of elections, ordering the holding of primary elections, preparing forms and records and a central roster for the registration of voters and performing such other duties in respect to elections.

B. Defendant Linwood Holton is Governor and Chief Executive Officer of the Commonwealth, and under 28 U.S. Code Section 2284 must be notified of any action in a United States Court involving the enforcement of a state statute.

C. Defendant Andrew P. Miller is Attorney General of the Commonwealth, and as such is charged with the duty of assisting attorneys for the Commonwealth of any jurisdic-

tion in which election laws have been violated and of doing all things necessary to enforce the election laws. Under 28 U.S. Code Section 2284 said defendant, as Attorney General of the Commonwealth, must be notified of any action in a United States Court involving the enforcement of a state statute.

D. The defendants Millard C. Rappleyea, Nancy D. Short, and Jones Jasper are the members of the Electoral Board of Fairfax County. As such, said defendants are charged with the duty of filing with the State Board of Elections a list of the names of candidates and of offices to be filled, preparation of ballots, preparing and having custody of voting machines, the conduct of elections in their county, canvassing the results thereof, making out certificates of election for the persons having the highest number of votes for any office, including the Senate and House of Delegates, and other duties in connection therewith. They are sued as representatives of all of the members of county and city electoral boards in the Commonwealth, such persons constituting a class so numerous as to make it impracticable to bring them all before the court. This action involves common questions of law and fact affecting the several rights of all of said members, and common relief is sought against them.

V

Plaintiffs are now denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States. Plaintiffs bring this action on their own behalf and on behalf of all of the registered and qualified voters of their respective Counties and Cities, and on behalf of all voters in Virginia who are similarly situated. Plaintiffs seek a declaration of their rights and a declaration of the validity or invalidity of the

act of the Commonwealth which apportions the members of the House of Delegates among the counties and cities of Virginia. They further seek such injunctive relief as may be proper to assure them and all other voters of Virginia the free and equal franchise and the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States and which rights are now being denied them by the defendants under a certain unconstitutional statute, as hereinafter more particularly set forth.

VI

Sections 40 through 43 inclusive of the Constitution of Virginia which became effective in 1902 and which, as amended from time to time, continues in effect until July 1, 1971 except as to the reapportionment provisions, provide that the legislative power of the Commonwealth shall be vested in a General Assembly which shall consist of a Senate and House of Delegates (Section 40); that the Senate shall consist of not more than forty and not less than thirty-three members who shall be elected quadrennially by the voters of the several senatorial districts (Section 41); that the House of Delegates shall consist of not more than one hundred and not less than ninety members who shall be elected biennially by the voters of the several House districts (Section 42); and that a reapportionment of the Commonwealth into Senatorial and House districts shall be made in the year 1932 and every ten years thereafter (Section 43).

VII

Article IV, Sections 1 through 3 inclusive of the revised Constitution of Virginia which was agreed to by the General Assembly at the 1969 special session and the 1970 regular session and was approved by the people of Virginia

in a referendum held November 3, 1970, and which becomes effective on July 1, 1971, except as provided in its "Schedule," contain the same provisions as the above Sections 40 through 42 of the 1902 Constitution. Article II, Section 6, of the revised Constitution provides that members of the Senate and House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly; that every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as practicable, representation in proportion to the population of the district; and that the General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 1971 and every ten years thereafter. Section 5 of the Schedule to the revised Constitution provides that the General Assembly shall convene at the Capitol on January 6, 1971, in special session, shall enact such laws as may be deemed proper, and shall reapportion the Commonwealth into electoral districts in accordance with the above Article II, Section 6, of the revised Constitution.

VIII

Pursuant to said provisions of the 1902 Constitution of Virginia, the General Assembly did in 1962 apportion the Commonwealth into separate Senatorial and House Districts. In 1964 the 1962 apportionment act was amended. By Section 24.1-12 of the Code of Virginia enacted in 1970 the provisions of the 1962 apportionment act, as amended in 1964, were continued in effect, dividing the Commonwealth into sixty-two House districts, whose respective locations and number of Delegates are shown on Exhibit A annexed. By Section 24.1-14 of the Code of Virginia, the Commonwealth was divided into thirty-three Senate districts, whose respective locations and number of Senators are shown on Exhibit B annexed.

IX

The apportionments set forth in Exhibits "A" and "B" hereto annexed are the ones hitherto effective in the Commonwealth of Virginia. In the special session of the General Assembly of Virginia held in January and February of this year the General Assembly purported to repeal the above Sections 24.1-12 and 24.1-14 and to add new Sections 24.1-12.1 and 24.1-14.1, respectively reapportioning the House and Senate districts. Said Section 24.1-12.1 was added by House Bill No. 63, which was signed by the governor and became effective, subject to review by the Attorney General of the United States, on March 1, 1971. By House Bill 63, a copy of which is annexed as Exhibit C, the Commonwealth is divided into fifty-two House districts, whose respective locations and number of Delegates are shown in said act. Also annexed as Exhibit D is a list showing the location and population (final 1970 U.S. Census figures) of said fifty-two new House districts as thus reapportioned by the General Assembly, the number of seats per district, the population per seat, the percentage by which each seat varies above or below the optimum population of 46,485 persons per seat, and the number of persons by which each seat is more than five percent above or below said optimum population per seat.

Said Section 24.1-14.1 was added by Committee substitute for Senate Bill No. 54, which was also signed by the governor and became effective, subject to review by the Attorney General of the United States, on March 1, 1971. By Committee substitute for Senate Bill No. 54, a copy of which is annexed as Exhibit E, the Commonwealth is divided into forty, single-Senator districts, the locations of which are shown in said act.

X

Section 24.1-174 of the Code of Virginia, as amended by the General Assembly at the 1971 special session, provides that primaries for the nomination of candidates for offices to be voted on at the general election on November 2, 1971, including candidates for the Senate and House of Delegates, shall be held on June 8, 1971, except that primaries for the nomination of candidates for county boards of supervisors shall be held on September 14, 1971. Under Sections 24.1-184, 185 and 186, all primary candidates must file declarations of candidacy and appropriate petitions with party officials not later than sixty days before the primary—i.e., in the case of candidates for the Senate and House of Delegates, not later than April 9, 1971. Under Section 24.1-172 of the Code, a party selecting a nominee for any office, including the Senate and House of Delegates, by any method other than direct primary must do so within the thirty days immediately preceding the primary date of June 8, 1971.

XI

Plaintiffs aver that said 1971 House reapportionment act embodied in Code Section 24.1-12.1 invidiously discriminates against the plaintiffs and all other voters of the districts in which plaintiffs reside and against the voters of many other House Districts in the Commonwealth, because such act creates many districts which have substantial and constitutionally impermissible variations of population:

A. The populations of the fifty-two new House districts, according to final 1970 census figures vary from a population of 50,964 per House seat, which is 9.6% above the optimum population of 46,485 per House seat (Sixteenth district), to a population of 43,319, which is 6.8% below the optimum (Twelfth district). The difference in popula-

tion between the largest and smallest House seats is 7,645 or 16.4%.

B. House districts containing twenty-seven out of one hundred members of the House of Delegates have populations which are at least 5% above (48,809) or at least 5% below (44,161) the optimum population of 46,485.

XII

Plaintiffs, as citizens of the United States and as citizens and registered and qualified voters of the Commonwealth of Virginia, possess an inherent right to vote for members of the General Assembly of the Commonwealth and to cast votes that are equally effective with the votes of every other citizen of said Commonwealth; but plaintiffs aver that by virtue of the invidious discrimination practiced by the General Assembly in the reapportionment statute hereinbefore referred to the votes of the plaintiffs are not as effective as the votes of voters residing in other House districts of the Commonwealth. As instances of such invidious discrimination, plaintiffs cite the following:

A. Every House district in Northern Virginia, comprising the Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second and Twenty-third House districts which include Fairfax, Arlington, Prince William and Loudoun Counties and Fairfax, Falls Church and Alexandria Cities, are under-represented. Each House seat in each such district has a population per seat ranging from 47,537 to 49,417, which is 2.3% to 6.3% above the optimum population per House seat of 46,485. Each House seat in Northern Virginia is under-represented an average of more than 4.3% per seat.

B. The Northern Virginia Counties and Cities set forth above have a total population of 921,237 persons according

to the final 1970 census figures, which figure is 19.82% of the Commonwealth's total population of 4,648,494. Under said 1971 House reapportionment act, said Northern Virginia jurisdictions are allotted among them only nineteen House seats or 19% of a total of one hundred although under the 1971 Senate reapportionment act they are allotted eight Senate seats or a full 20% of a total of forty, and under the 1971 Congressional reapportionment act (Code Section 24.1-41) they are allotted two Congressional seats or a full 20% of a total of 10.

C. The instances of invidious discrimination set forth above are particularly unfair and discriminatory in that said Northern Virginia Counties and Cities as an area comprise the fastest growing region in the Commonwealth. During the past decade they grew at an average rate of 46% as compared with a State-wide average of 17.2%. Growth rates varied from 5.7% for the City of Falls Church (population 10,772) to 51.3% for Loudoun County (37,150), 65.5% for Fairfax County (455,021), and 121.5% for Prince William County (111,102).

D. In contrast, the City of Norfolk with a population of 307,951 is given under said 1971 House reapportionment act seven House seats (Thirty-ninth district), each of which seats has a population of 43,933. Thus, the Norfolk district and each of such seven seats are overrepresented by 5.4%, although during the last decade Norfolk grew at a rate of only 1%, and although there are included in the total Norfolk population 36,000 naval personnel who are on U.S. naval vessels overseas and are included in the Norfolk total only because their ships berth at the Norfolk Navy Yard. Many of these personnel undoubtedly reside elsewhere in the Commonwealth and in the United States.

E. In further contrast, the City of Chesapeake with a population of 89,580 is given under said 1971 House reapportionment act two House seats (Thirty-eighth district), each of which has a population of 44,790. Thus, the Chesapeake district and each of such seats are overrepresented by 3.6%. In addition, however, under said act Chesapeake shares with the residents of the Cities of Virginia Beach and Portsmouth a third "floater" House seat (Forty-second district). Therefore, the residents of Chesapeake, who are mathematically entitled to 1.9 House seats, will under said act vote for and be represented by three Delegates holding said seats.

XIII

The only rationale put forth for said 1971 House reapportionment act and for the substantial variations of population among the House districts created by it was and is the desire of the General Assembly to avoid placing portions of any county or city in different House districts. However, no provision of the Virginia Constitution or of any statute forbids the division of counties or cities in the course of reapportionment; the refusal of the General Assembly to do so in developing and enacting the 1971 House reapportionment statute was based only on long-standing custom of preserving the territorial integrity of localities. Moreover, this custom has been rejected in the 1971 Senate reapportionment act, which creates 40 single-member Senatorial districts, many of which place portions of counties and cities in different districts; and the custom is even disregarded in the 1971 House reapportionment act itself, which divides Fairfax County between two separate districts (Eighteenth and Nineteenth). Some counties and cities must be divided if House distrcts are to meet the

constitutional test that they all be substantially equal in population.

In enacting said 1971 House reapportionment act, the General Assembly was compelled to depart from the usual pattern that House districts be smaller in population than Senate districts. The eight Northern Virginia Senate districts range in population from 110,938 to 118,058, whereas five out of six Northern Virginia House districts, containing seventeen out of nineteen Northern Virginia House seats, range in population from 148,252 (Twentieth) to 285,222 (Twenty-third).

XIV

Plaintiffs further aver that the establishment by said 1971 House reapportionment act of two five-member House districts, one consisting of the portion of Fairfax County in the Tenth Congressional District and the Cities of Fairfax and Falls Church (Eighteenth) and the other comprising the portion of Fairfax County in the Eighth Congressional District (Nineteenth), and the establishment by said act of a three-member House district comprising the County of Arlington (Twenty-second) and of a one-member "floater" district shared by the County of Arlington and the City of Alexandria (Twenty-third) will result in invidious discrimination against the plaintiffs and other voters residing in said districts and will cause their votes to be less effective than the votes of voters residing in single-member House districts throughout the Commonwealth, in that:

A. The populations of multi-member or "floater" House districts are many times larger than those of single-member House districts. For instance, the Fairfax-Falls Church five-member district (Eighteenth) contains 246,509 per-

sons; the Fairfax five-member district (Nineteenth) contains 241,254 persons; the Arlington three-member district (Twenty-second) contains 174,284 persons; and the Arlington-Alexandria "floater" (Twenty-third) contains 285,222 persons, whereas the ideal single-member House district would contain, as heretofore stated, 46,485 persons. As a result, any potential candidates for House seats, including some of the plaintiffs herein, are deterred from seeking office in multi-member or "floater" districts because of the higher cost of campaigns therein; voters in multi-member districts find it much more difficult and confusing during campaigns and elections to select the best candidates from among large groups of competing office-seekers than would be the case if their choice was to be made between two or three candidates; and after elections, voters in multi-member districts find it more difficult to determine which of a large group of elected Delegates to contact or who would best represent them on political matters than would be the case if they were represented by one Delegate only.

B. In multi-member and floater districts which as in the case of those mentioned above have no subdistrict residence requirements, many or even most voters in such a district may never reside anywhere near any of their Delegates—or they may reside near a large group of them. Under a previous House reapportionment statute, Fairfax County and the Cities of Fairfax and Falls Church were and are represented by six Delegates at large. In four of the last six years, three of such six Delegates or 50% of the total have lived in Dranesville District whose population is approximately 10% of the total population of the House district. During the same period, no Delegates lived in Mount Vernon or Lee Districts, whose population represents about 26% of the total population. Under a previous reapportionment act, Arlington County has since 1965 comprised a

four-member House district. At the present time all four Delegates representing Arlington live in a relatively small portion of North Arlington, north of Lee Highway (State routes 29 and 211). Physical proximity between voters and their legislator, which would more often happen in the case of single-member districts, produce better communication and improved representation of the voters.

C. The large populations of multi-member and "floater" districts submerge the interests of minority racial, political, and other groups of voters within such districts. For instance, the establishment by said 1971 House reapportionment act of the five-member House district consisting of the portion of Fairfax County in the Tenth Congressional District and the small Cities of Fairfax and Falls Church (Eighteenth), will result in invidious discrimination against the plaintiffs and other voters resding in said cities, because of the population imbalance between the County (213,767) and the Cities (Fairfax City, 21,970; Falls Church City, 10,772). The five Delegates to be elected from this district can anticipate receiving some 87% of their votes from the County and 13% from the two Cities. Under such circumstances, on any issue in which the County and Cities are at odds (such as the allocation of State revenues for highways between cities and counties) the five Delegates would undoubtedly vote on the County side of the issue and against the interests of voters residing in said Cities. The creation of five single-member House districts in the place of the proposed five-member House district would give the residents of the two Cities a much stronger voice in the selection and election of candidates for the House. To date, no resident of either City has ever been elected as a member of the House of Delegates.

Similarly, the disparity between the population of the

County of Arlington (174,284) and the City of Alexandria (110,936) which are both contained in one "floater" House district (the Twenty-third) effectively denies to the citizens of Alexandria any representation from the "floater" Delegate on any issue where the interests of the County and City are adverse. Nor is such a huge district of benefit to Arlington, as shown by the opposition to it by the local governing body and spokesmen of both major political parties.

XV

Plaintiffs aver that when all of the many inequalities in the above mentioned reapportionment statute are considered together, they result in a distortion of the constitutional system as established, defined and guaranteed by the Fourteenth Amendment to the Constitution of the United States, and that this distortion denies to plaintiffs the equal protection of the laws.

XVI

Plaintiffs aver that the constitutional requirements aforementioned can only be met by a revision of the 1971 House reapportionment act so as to reapportion House districts and seats among the Counties and Cities of Northern Virginia hereinbefore mentioned in fairer proportion to their respective populations and to allot them one additional House seat, and so as to reapportion Fairfax County and Arlington County, respectively, into single-member districts shared as necessary with neighboring juridictions, in place of the above described multi-member districts and "floater" district as proposed under the 1971 act.

XVII

The special session of the General Assembly of Virginia which was held in January and February of this year, has

adjourned until March 29, 1971, and then or thereafter may adjourn to a later date. In the meantime, there will be a primary election throughout the Commonwealth for members of the House of Delegates on June 8, 1971, and unless the inequities herein complained of are corrected by this Court, the plaintiffs and all other voters similarly situated will be denied the equal protection of the laws in said elections. The defendants, unless prevented by this Court will perform their duties in the conduct of such elections in an unconstitutional manner.

Wherefore, plaintiffs pray:

1. That this Court may take jurisdiction of this controversy.

2. That a special three-judge court be called and impanelled to hear and determine this action and to declare the rights of plaintiffs in the premises to be as follows:

A. That the reapportionment of House districts in the Commonwealth of Virginia made by Section 24.1-12.1 of the Code of Virginia denies the plaintiffs and other voters of the Commonwealth similarly situated the equal protection of the laws, in contravention of the Fourteenth Amendment of the Constitution of the United States.

B. That said Section 24.1-12.1, as now in force, insofar as it applies to the Counties of Fairfax, Arlington, Prince William and Loudoun and the Cities of Fairfax, Falls Church and Alexandria is unconstitutional and void.

3. That upon final hearing of this action, the Court grant to the plaintiffs the following further relief:

A. That the defendants and each of them be permanently restrained and enjoined from furnishing forms

for nominations, from receiving the names of candidates, notices of candidacy or petitions therefor, from ordering or conducting the Primary election scheduled to be held on June 8, 1971, or the General election scheduled to be held on November 2, 1971, from certifying the results of either such election, and from taking any and all other steps with respect to the election of members of the House of Delegates of the Commonwealth of Virginia under and pursuant to Code Section 24.1-12.1, until there has been a further reapportionment of House districts in accordance with constitutional requirements as approved or promulgated by this Court.

B. That this Court notify the Speaker of the House of Delegates and the President of the Senate of the General Assembly of Virginia as well as the defendants herein, of its decision and opinion so that when the General Assembly reconvenes on March 29, 1971, or is called back into session at a later date it will be afforded a reasonable opportunity to enact legislation amending or repealing the 1971 House redistricting statute and reapportioning the several House districts and seats among the above mentioned Counties and Cities of Northern Virginia in accordance with constitutional requirements and the decision and opinion of this Court.

C. That this Court retain jurisdiction of this cause until such time as the General Assembly amends the 1971 House reapportionment act or enacts new reapportionment legislation in accordance with constitutional requirements; that it hold further hearings to determine the validity of such amended or new apportionment legislation; and that in the absence of enactment by the General Assembly of a valid new House reapportionment act by June 1, 1971, this Court retain jurisdiction and hold

hearings in order to promulgate an apportionment plan for the House of Delegates which meets constitutional requirements.

D. That this Court enjoin and postpone the holding of the Primary election for members of the House of Delegates scheduled to be held on June 8, 1971 (and hence also postpone the deadline of April 9, 1971, for filing notices of candidacy and petitions therefor) until an appropriate date subsequent to a reapportionment of House districts in accordance with constitutional requirements as approved or promulgated by this Court.

4. That the plaintiffs may have such further and alternative relief as the nature of this action may require and this Court may deem proper.

Edmund D. Campbell
2000 North 16th Street
Arlington, Virginia 22216
Attorney for Plaintiffs
Tel. No. (202) 783-7151

ANSWER

Now comes the Attorney General of Virginia, Andrew P. Miller, as counsel for defendants Edgar A. Prichard, Member, State Board of Elections; Joan S. Mahan, Secretary, State Board of Elections; Ulysses P. Joyner, Jr., Chairman, State Board of Elections; A. Linwood Holton, Governor of Virginia; and Andrew P. Miller, Attorney General of Virginia, and in response to the Complaint filed herein answers and says:

First Defense

The Governor and Attorney General of the Commonwealth of Virginia do not threaten plaintiffs or any other

person with the operation, enforcement or execution of any law, nor has a cause of action been stated against said defendants. The requirement that said defendants be served notice pursuant to 28 U.S.C. § 2284 is not sufficient basis to make them parties to the action. They are therefore neither a necessary nor a proper party to this suit and should be dismissed.

Second Defense

The Complaint fails to state a claim upon which relief can be granted.

Third Defense

This Court is without jurisdiction to entertain the instant suit inasmuch as it presents a non-justiciable question.

Fourth Defense

In response to the allegations in the Complaint, defendants:

(a) Deny the allegation of Paragraph I of the Complaint.

(b) Admit the allegations of Paragraphs II, III and IV of the Complaint, except that they deny that the Attorney General and Governor are necessary and proper parties.

(c) Deny the allegations of Paragraph V of the Complaint.

(d) Aver the allegations contained in Paragraphs VI, VII, VIII, IX and X of the Complaint are conclusions of law and do not call for an answer, except that defendants deny the relevancy of those facts in Paragraphs IX and XI relating to those House seats either five percent above or below the optimum population.

(e) Deny as to the remaining allegations in Paragraph XI of the Complaint that the act therein referred to creates substantial and constitutionally impermissible variations of population within its House Districts.

(f) Admit that all of the citizens of the Commonwealth of Virginia have an inherent right to cast votes the weight of which is as near as practicable to the weight of the vote of all other citizens of the Commonwealth of Virginia, but they deny that the reapportionment statutes adopted by the General Assembly in 1971 invidiously discriminate against the plaintiffs or any other citizens of the Commonwealth by denying them this right; and they further state that the allegations of sub-paragraph (c) of Paragraph XII of the Complaint are irrelevant to a consideration of the Complaint.

(g) With regard to the allegations of Paragraph XIII of the Complaint, defendants state that this is a matter of political policy to be determined by the Legislature of the Commonwealth of Virginia and that such consideration is beyond the jurisdiction of this Court.

(h) Deny the allegations of Paragraphs XIV, XV and XVI of the Complaint.

(i) Admit the allegations of Paragraph XVII of the Complaint, except that defendants deny that any inequities in the reapportionment statute exist which would deny the plaintiffs and any other voters in the Commonwealth equal protection of the laws as the result of any elections held as a result of said statute, nor that they will conduct any elections pursuant to the said statutes in an unconsitutional manner.

Wherefore, having fully answered, and any allegations not answered are deemed to be denied, defendants pray that they be dismissed with their costs herein.

COMMONWEALTH OF VIRGINIA
OFFICE OF THE GOVERNOR

COMMONWEALTH OF VIRGINIA
OFFICE OF THE GOVERNOR

Division of State Planning
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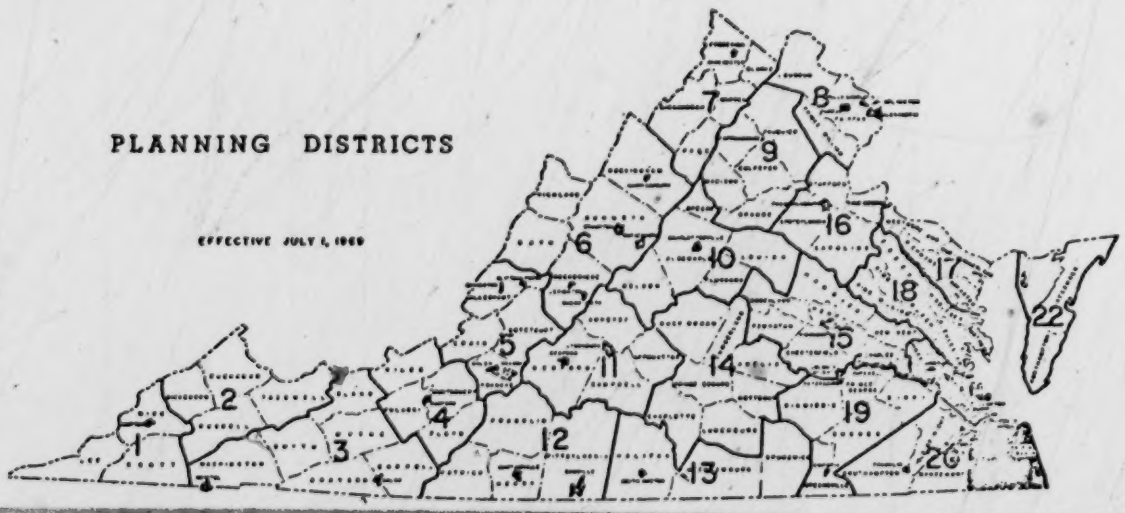
Statistical Information Series No. 71-1

March, 1971

POPULATION PROJECTIONS TO 1980, 1990, 2000, 2010, AND 2020 FOR VIRGINIA COUNTIES, CITIES, AND PLANNING DISTRICTS[a/]

Note: The statewide population projections to year 2020 were revised in light of the population figures obtained from the 1970 Census of Population and Housing. The projections are based on the fertility assumptions of Census Series D. Insight gained through the Economic Base Analysis and Projections Series Program of the Office of Research and Information in the Division of State Planning and Community Affairs and such factors as the present and historical general economic condition of each county and city; industrial development considerations; present and planned highway, air, and rail facilities; recreational, commercial and residential development; land use and settlement patterns; population density considerations; natural increase rates; and migration rates were used in developing the projections. These provisional projections are subject to change as new economic base studies are prepared for all Virginia counties and cities.

As with all projections, it should be realized that the longer the time period involved, the more likely the chance of error. Therefore greater reliability should be placed on the 1980 projections than on the projections beyond -- to year 2020.



POPULATION PROJECTIONS TO 1980, 1990, 2000, 2010, AND 2020, FOR VIRGINIA COUNTIES, CITIES, AND PLANNING DISTRICTS[a/]

	Actual (Census)		Projections					Average Annual Rates of Change					
	1960	1970	1980[b/]	1990	2000	2010	2020	1960-70	1970-80	1980-90	1990-2000	2000-2010	2010-2020
State of Virginia	3,954,429	4,648,494	5,415,000	6,284,000	7,222,000	8,217,000	9,350,000	+1.6	+1.5	+1.4	+1.4	+1.3	+1.3
Planning District One	100,212	84,645	74,800	70,000	67,900	66,800	66,800	-1.7	-1.2	-0.6	-0.3	-0.1	*
LENOWISCO PDC													
Lee County	25,824	20,321	17,000	15,000	14,000	13,500	13,500	-2.3	-1.8	-1.2	-0.6	-0.3	*
Scott County	25,813	24,376	23,800	24,000	24,500	25,000	25,000	-0.5	-0.2	*	+0.2	+0.2	*
Wise County	43,562	35,947	30,400	27,500	26,000	25,000	25,000	-1.9	-1.6	-1.0	-0.5	-0.4	*
Norton City	5,013	4,001	3,600	3,500	3,400	3,300	3,300	-2.2	-1.0	-0.2	-0.2	-0.2	*
Planning District Two	128,016	112,497	100,700	92,000	86,000	83,000	82,500	-1.3	-1.1	-0.9	-0.6	-0.3	*
Cumberland Plateau PDC													
Buchanan County	36,724	32,071	28,900	26,300	24,500	24,000	24,000	-1.3	-1.0	-0.9	-0.7	-0.2	*
Dickenson County	20,211	16,077	13,000	10,800	9,500	8,500	8,000	-2.2	-2.1	-1.6	-1.3	-1.1	-0.6
Russell County	26,290	24,533	22,800	21,400	20,500	20,000	20,000	-0.6	-0.7	-0.6	-0.4	-0.2	*
Tazewell County	44,791	39,816	36,000	33,500	31,500	30,500	30,500	-1.1	-1.0	-0.7	-0.6	-0.3	*
Planning District Three	160,065	159,412	162,300	168,000	178,000	190,000	205,000	*	+0.2	+0.3	+0.5	+0.6	+0.7
Mount Rogers PDC													
Bland County	5,982[c/]	5,423	5,000	4,700	4,500	4,400	4,300	-0.9	-0.8	-0.6	-0.4	-0.2	-0.2
Carroll County	22,746[c/]	23,092	23,500	23,800	24,500	25,200	26,000	+0.1	+0.1	+0.1	+0.2	+0.2	+0.3
Grayson County	16,540[c/]	15,439	14,600	14,000	13,600	13,300	13,300	-0.6	-0.5	-0.4	-0.2	-0.1	*
Smyth County	31,066	31,349	32,000	33,000	35,000	37,400	40,400	+0.1	+0.2	+0.3	+0.5	+0.6	+0.7
Washington County	38,076	40,835	44,600	49,800	57,000	65,500	76,000	+0.7	+0.8	+1.1	+1.3	+1.4	+1.5
Wythe County	21,975	22,139	22,500	23,000	23,800	24,700	25,500	+0.1	+0.2	+0.2	+0.3	+0.3	+0.3
Bristol City	17,144	14,857	14,000	13,700	13,600	13,500	13,500	-1.6	-0.6	-0.2	*	*	*
Galax City	6,536[c/]	6,278	6,100	6,000	6,000	6,000	6,000	-0.4	-0.2	-0.1	*	*	*
Planning District Four	97,233	114,833	135,500	158,500	182,000	208,000	236,000	+1.7	+1.7	+1.5	+1.4	+1.3	+1.2
New River Valley PDC													
Floyd County	10,462	9,775	9,300	9,000	9,000	9,100	9,200	-0.6	-0.5	-0.3	*	+0.1	+0.1
Giles County	17,219	16,741	16,600	16,500	16,500	16,500	16,500	-0.3	-0.1	*	*	*	*
Montgomery County	32,923	47,157	64,600	83,600	102,500	123,200	146,000	+3.7	+3.2	+2.6	+2.0	+1.8	+1.7
Pulaski County	27,258	29,564	32,500	36,200	40,000	44,600	49,300	+0.8	+1.0	+1.0	+1.0	+1.0	+1.0
Radford City	9,371	11,596	12,500	13,200	14,000	14,600	15,000	+2.1	+0.6	+0.5	+0.5	+0.4	+0.2
Planning District Five	207,332	231,175	258,900	289,500	322,000	358,000	400,000	+1.1	+1.2	+1.1	+1.0	+1.0	+1.0
Fifth PDC													
Alleghany County	11,651	12,461	13,000	13,800	14,800	15,700	16,700	+0.3	+0.4	+0.6	+0.6	+0.6	+0.6
Botetourt County	16,715	18,193	20,000	22,800	26,200	30,400	35,300	+0.9	+1.0	+1.3	+1.3	+1.5	+1.5
Craig County	3,356	3,524	3,700	4,000	4,500	5,100	5,800	+0.5	+0.5	+0.7	+1.1	+1.2	+1.2
Roanoke County[b/]	45,635	67,339	90,000	112,000	234,500	158,000	185,200	+4.0	+2.9	+2.0	+1.8	+1.6	+1.6
Clifton Forge City	5,745	5,501	5,500	5,500	5,500	5,500	5,500	-0.4	*	*	*	*	*
Covington City	11,062	10,060	9,500	9,200	9,000	9,000	9,000	-0.9	-0.5	-0.3	-0.2	*	*
Roanoke City	97,110	92,115	89,000	87,000	85,500	85,000	85,000	-0.5	-0.3	-0.2	-0.1	-0.1	*
Salem City[b/]	16,058	21,982	28,200	35,200	42,000	49,300	57,500	+3.2	+2.5	+2.2	+1.8	+1.6	+1.5

PLAINTIFFS' (DuVAL) EXHIBIT 25

POPULATION PROJECTIONS TO 1980, 1990, 2000, 2010, AND 2020, FOR VIRGINIA COUNTIES, CITIES, AND PLANNING DISTRICTS[a/] (Cont.)

	Actual (Census)		Projections					Average Annual Rates of Change					
	1960	1970	1980[b/]	1990	2000	2010	2020	1960-70	1970-80	1980-90	1990-2000	2000-2010	2010-2020
Planning District Six	166,585	186,306	205,900	226,500	246,000	267,000	287,000	+1.1	+1.0	+0.9	+0.8	+0.8	+0.7
Central Shenandoah PDC													
Augusta County	37,363	44,220	51,000	58,500	65,900	74,300	82,000	+1.7	+1.5	+1.3	+1.2	+1.2	+1.0
Bath County	5,335	5,192	5,000	4,800	4,700	4,600	4,600	-0.3	-0.3	-0.4	-0.2	-0.2	*
Highland County	3,221	2,529	2,200	2,000	1,900	1,800	1,800	-2.3	-1.2	-0.9	-0.5	-0.5	*
Rockbridge County	16,502	16,637	17,000	17,500	18,000	18,700	19,600	+0.1	+0.2	+0.2	+0.3	+0.4	+0.5
Rockingham County	39,559	47,890	55,000	61,600	68,000	75,000	81,200	+1.7	+1.4	+1.1	+1.0	+1.0	+0.8
Buena Vista City	6,300	6,425	6,600	6,800	7,100	7,400	7,700	+0.2	+0.3	+0.3	+0.4	+0.4	+0.4
Harrisonburg City	12,842	14,605	16,800	18,800	20,400	22,000	23,400	+2.1	+1.4	+1.1	+0.8	+0.7	+0.6
Lexington City	7,537	7,597	7,800	8,000	8,100	8,200	8,300	+0.1	+0.3	+0.2	+0.1	+0.1	+0.1
Staunton City	22,232	24,504	27,000	30,000	32,500	34,800	37,000	+1.0	+1.0	+1.0	+0.8	+0.7	+0.6
Waynesboro City	15,694	16,707	17,500	18,500	19,400	20,400	21,400	+0.6	+0.5	+0.5	+0.5	+0.5	+0.5
Planning District Seven	97,045	106,372	117,000	128,800	142,000	156,000	172,000	+0.9	+1.0	+0.9	+0.9	+0.9	+0.9
Lord Fairfax PDC													
Clarke County	7,942	8,102	8,300	8,500	8,700	9,000	9,300	+0.2	+0.2	+0.2	+0.2	+0.3	+0.3
Frederick County[d/]	21,941	28,893	28,700	33,400	39,200	45,500	52,800	+2.8	*	+1.5	+1.6	+1.5	+1.5
Page County	15,572	16,581	17,500	18,500	19,400	20,400	21,500	+0.6	+0.6	+0.5	+0.5	+0.5	+0.5
Shenandoah County	21,825	22,852	24,000	25,400	26,800	28,200	29,600	+0.5	+0.5	+0.5	+0.5	+0.5	+0.5
Warren County	14,655	15,301	16,000	17,000	18,000	19,100	20,400	+0.4	+0.5	+0.6	+0.6	+0.6	+0.6
Winchester City[d/]	15,110	14,643	22,500	26,000	29,900	34,000	38,400	-0.3	+4.4	+1.4	+1.4	+1.3	+1.2
Planning District Eight	601,808	921,237	1,256,300	1,625,500	2,030,300	2,434,600	2,908,600	+4.4	+3.1	+2.6	+2.2	+1.8	+1.8
Northern Virginia PDC													
Arlington County	163,401	174,284	191,700	210,000	223,000	232,100	241,600	+0.6	+1.0	+0.9	+0.6	+0.4	+0.4
Fairfax County	248,897	455,021	636,000	852,000	1,080,300	1,306,900	1,566,000	+6.2	+3.4	+2.9	+2.4	+1.8	+1.8
Loudoun County	24,549	37,150	75,000	125,000	192,100	271,000	378,600	+4.2	+7.3	+5.2	+4.3	+3.5	+3.4
Prince William County	50,164	111,102	180,000	240,000	304,300	370,900	452,100	+8.3	+5.0	+2.9	+2.4	+2.0	+2.0
Alexandria City	91,023	110,938	132,100	154,000	170,200	184,300	193,700	+2.0	+1.7	+1.5	+1.0	+0.8	+0.5
Fairfax City	13,585	21,970	30,000	38,000	46,300	53,800	59,400	+4.9	+3.2	+2.3	+2.0	+1.5	+1.0
Falls Church City	10,192	10,772	11,500	12,800	14,100	15,600	17,200	+0.6	+0.7	+1.0	+1.0	+1.0	+1.0
Planning District Nine	65,609	72,222	81,300	93,000	107,000	124,000	144,000	+1.0	+1.2	+1.5	+1.4	+1.4	+1.5
Rappahannock-Rapidan PDC													
Culpeper County	15,088	18,218	21,500	25,000	28,700	32,700	36,800	+1.9	+1.7	+1.5	+1.4	+1.3	+1.2
Fauquier County	24,066	26,375	31,000	37,500	46,200	57,400	71,300	+0.9	+1.6	+2.0	+2.1	+2.2	+2.2
Madison County	8,187	8,638	9,100	9,600	10,100	10,600	11,100	+0.5	+0.6	+0.5	+0.5	+0.5	+0.5
Orange County	12,900	13,792	14,600	15,800	16,900	18,100	19,400	+0.7	+0.7	+0.7	+0.7	+0.7	+0.7
Rappahannock County	5,368	5,199	5,100	5,100	5,100	5,200	5,400	-0.3	-0.2	*	*	+0.1	-0.3
Planning District Ten	98,049	115,235	132,500	152,400	174,000	198,500	224,000	+1.6	+1.4	+1.4	+1.3	+1.3	+1.2
Thomas Jefferson PDC													
Albemarle County	26,583	37,780	45,400	55,000	65,700	77,800	92,500	+2.0	+1.9	+1.9	+1.8	+1.7	+1.7
Fluvanna County	7,227	7,621	8,000	8,500	9,100	9,900	10,800	+0.5	+0.5	+0.6	+0.7	+0.8	+0.8
Greene County	4,715	5,248	5,900	6,800	8,000	9,400	11,200	+1.1	+1.2	+1.4	+1.5	+1.6	+1.7
Louisa County	12,959	14,004	15,500	17,500	20,000	23,000	26,500	+0.8	+1.0	+1.2	+1.3	+1.4	+1.4
Nelson County	12,752	11,702	11,000	10,600	10,200	10,000	10,000	-0.8	-0.6	-0.3	-0.3	-0.1	*
Charlottesville City	33,813	38,880	46,700	54,000	61,000	67,400	73,000	+2.8	+1.9	+1.4	+1.2	+1.0	+0.8

PLAINTIFFS' (DuVAL) EXHIBIT 25

POPULATION PROJECTIONS TO 1980, 1990, 2000, 2010, AND 2020, FOR VIRGINIA COUNTIES, CITIES, AND PLANNING DISTRICTS[a] (Cont.)

	Actual (Census)		Projections					Average Annual Rates of Change					
	1960	1970	1980[b]	1990	2000	2010	2020	1960-70	1970-80	1980-90	1990-2000	2000-2010	2010-2020
Planning District Eleven	150,877	165,997	182,600	201,900	221,000	243,000	268,000	+1.0	+1.0	+1.0	+0.9	+0.9	+0.9
Central Virginia PDC													
Amherst County	22,953	26,072	29,500	33,500	37,400	41,300	45,600	+1.3	+1.3	+1.2	+1.1	+1.0	+1.0
Appomattox County	9,148[c]	9,784	10,500	11,600	12,800	14,300	16,100	+0.7	+0.7	+0.9	+1.0	+1.1	+1.2
Bedford County	25,107[c]	26,728	28,000	29,500	30,700	32,200	33,800	+0.6	+0.5	+0.4	+0.4	+0.4	+0.4
Campbell County	32,958	43,319	55,000	68,000	81,200	96,500	114,000	+2.8	+2.4	+2.1	+1.8	+1.7	+1.6
Bedford City	5,921[c]	6,011	6,100	6,300	6,400	6,500	6,500	+0.2	+0.2	+0.3	+0.1	+0.1	*
Lynchburg City	54,790	54,083	53,500	53,000	52,500	52,200	52,000	-0.1	-0.1	-0.1	-0.1	*	*
Planning District Twelve	205,213	217,874	232,900	252,000	272,000	294,000	317,000	+0.6	+0.7	+0.7	+0.7	+0.7	+0.7
West Piedmont PDC													
Franklin County	25,925	26,858	27,900	29,500	31,200	33,100	35,200	+0.4	+0.4	+0.5	+0.5	+0.6	+0.6
Henry County	40,335	50,901	62,000	74,800	87,500	101,600	116,500	+2.4	+2.0	+1.8	+1.5	+1.5	+1.4
Patrick County	15,282	15,282	15,500	16,000	16,700	17,400	18,100	*	+0.1	+0.3	+0.4	+0.4	+0.4
Pittsylvania County	58,296	58,789	60,000	62,000	64,500	67,800	71,300	+0.1	+0.2	+0.3	+0.4	+0.5	+0.5
Danville City	46,577	46,391	46,500	47,000	47,500	48,000	48,500	*	*	+0.1	+0.1	+0.1	+0.1
Martinsville City	18,798	19,653	21,000	22,700	24,600	26,100	27,400	+0.4	+0.7	+0.8	+0.8	+0.6	+0.5
Planning District Thirteen	88,818	82,563	79,100	78,000	77,000	78,000	78,800	-0.7	-0.4	-0.1	-0.1	+0.1	+0.1
Southside PDC													
Brunswick County	17,779	16,172	15,200	14,800	14,500	14,500	14,600	-0.9	-0.6	-0.2	+0.2	*	*
Halifax County	32,864[c]	30,076	28,500	27,700	27,500	27,700	28,000	-0.8	-0.5	-0.2	*	*	*
Mecklenburg County	31,428	29,426	28,500	28,500	28,600	28,800	29,000	-0.6	-0.3	*	*	*	*
South Boston City	6,747[c]	6,889	6,900	7,000	7,000	7,000	7,200	+0.2	*	+0.1	*	*	+0.2
Planning District Fourteen	80,205	76,245	75,000	75,000	75,300	76,000	77,000	-0.5	-0.2	*	*	*	+0.1
Piedmont PDC													
Amelia County	7,815	7,592	7,600	8,000	8,500	9,000	9,700	-0.3	-0.1	+0.5	+0.6	+0.6	+0.8
Buckingham County	10,877	10,597	10,400	10,300	10,200	10,100	10,000	-0.3	-0.2	-0.1	-0.1	*	*
Charlotte County	13,368	11,551	10,800	10,200	9,800	9,500	9,200	-1.3	-0.6	-0.5	-0.4	-0.3	-0.3
Cumberland County	6,360	6,179	6,000	5,800	5,600	5,500	5,400	-0.3	-0.3	-0.3	-0.3	-0.1	-0.1
Lunenburg County	12,523	11,687	11,400	11,200	11,000	10,800	10,700	-0.7	-0.2	-0.1	-0.1	-0.1	*
Nottoway County	15,141	14,260	14,000	14,000	14,100	14,200	14,200	-0.6	-0.2	*	*	*	*
Prince Edward County	14,121	14,379	14,800	15,500	16,100	16,900	17,800	+0.2	+0.3	+0.4	+0.4	+0.5	+0.5
Planning District Fifteen	461,993	547,542	649,100	764,000	883,000	1,010,000	1,150,000	+1.7	+1.7	+1.6	+1.4	+1.3	+1.3
Richmond Regional PDC													
Charles City County	5,492	6,158	7,100	8,300	9,800	11,600	13,800	+1.2	+1.4	+1.5	+1.6	+1.7	+1.8
Chesterfield County	43,855[c]	76,855	100,000	135,000	178,000	227,800	283,700	+5.8	+2.7	+3.0	+2.8	+2.5	+2.2
Goochland County	9,206	10,069	15,000	22,000	31,300	42,800	56,500	+0.9	+4.1	+3.9	+3.6	+3.2	+2.8
Hanover County	27,550	37,479	52,500	70,000	88,800	108,200	130,000	+3.1	+3.4	+2.9	+2.4	+2.0	+2.0
Henrico County	117,339	154,364	193,000	230,000	264,400	298,000	330,000	+2.8	+2.1	+1.7	+1.4	+1.2	+1.0
New Kent County	4,504	5,300	6,500	8,500	11,200	14,900	20,000	+1.6	+2.1	+2.7	+2.8	+2.9	+3.0
Powhatan County	6,747	7,696	10,000	14,000	19,500	26,700	36,000	+1.3	+2.7	+3.4	+3.4	+3.2	+3.0
Richmond City	247,300[c]	249,621	265,000	276,000	280,000	280,000	280,000	+0.1	+0.6	+0.4	+0.1	*	*

PLAINTIFFS' (DuVAL) EXHIBIT 25

POPULATION PROJECTIONS TO 1980, 1990, 2000, 2010, AND 2020, FOR VIRGINIA COUNTIES, CITIES, AND PLANNING DISTRICTS[a/] (Cont.)

	Actual (Census)		Projections					Average Annual Rates of Change					
	1960	1970	1980[b/]	1990	2000	2010	2020	1960-70	1970-80	1980-90	1990-2000	2000-2010	2010-2020
Planning District Sixteen	64,302	77,425	93,400	113,000	134,000	157,600	183,300	+1.9	+1.9	+1.9	+1.7	+1.6	+1.5
RADCO PDC													
Caroline County	12,725	13,925	15,500	17,500	18,500	21,300	24,000	+0.9	+1.1	+1.2	+1.3	+1.2	+1.2
King George County	7,243	8,039	9,200	10,500	11,900	13,400	15,200	+1.1	+1.4	+1.3	+1.2	+1.2	+1.2
Spotsylvania County	13,819	16,424	20,500	25,000	30,000	35,200	40,900	+1.8	+2.2	+2.0	+1.8	+1.6	+1.5
Stafford County	16,876	24,587	33,600	44,000	57,000	70,800	86,000	+3.8	+3.0	+2.9	+2.6	+2.2	+1.9
Fredericksburg City	13,639	14,450	15,200	16,000	16,600	16,900	17,200	+0.6	+0.5	+0.5	+0.3	+0.2	+0.2
Planning District Seventeen	36,776	37,011	37,700	38,900	40,200	41,500	43,000	*	+0.1	+0.3	+0.3	+0.3	+0.3
Northern Neck PDC													
Lancaster County	9,174	9,126	9,100	9,100	9,100	9,100	9,100	*	*	*	*	*	*
Northumberland County	10,185	9,239	8,600	8,200	8,000	7,900	7,800	-0.9	-0.7	-0.4	-0.2	-0.1	-0.1
Richmond County	6,375	6,504	6,700	7,000	7,300	7,600	7,900	+0.2	+0.3	+0.4	+0.4	+0.4	+0.4
Westmoreland County	11,042	12,142	13,300	14,600	15,800	16,900	18,200	+1.0	+1.0	+0.9	+0.8	+0.7	+0.6
Planning District Eighteen	45,501	47,609	50,800	54,800	59,000	64,000	70,000	+0.5	+0.7	+0.7	+0.7	+0.8	+0.9
(Not yet organized)													
Essex County	6,690	7,099	7,700	8,500	9,400	10,400	11,600	+0.6	+0.8	+0.9	+1.0	+1.0	+1.0
Gloucester County	11,919	14,059	17,000	20,200	23,400	27,000	31,000	+1.7	+1.9	+1.7	+1.5	+1.4	+1.4
King and Queen County	5,889	5,491	5,200	5,000	4,800	4,800	4,800	-0.7	-0.5	-0.4	-0.4	*	*
King William County	7,563	7,497	7,400	7,500	7,600	7,800	8,200	-0.1	-0.1	+0.1	+0.1	+0.1	+0.4
Mathews County	7,121	7,168	7,200	7,300	7,400	7,500	7,700	*	*	+0.1	+0.1	+0.1	+0.2
Middlesex County	6,319	6,295	6,300	6,300	6,400	6,500	6,700	*	*	*	+0.1	+0.1	+0.2
Planning District Nineteen	141,471	161,059	177,800	198,500	220,000	245,000	272,000	+1.3	+1.0	+1.0	+1.0	+1.0	+1.0
Crater PDC													
Dinwiddie County[f/]	22,183	25,046	23,100	26,000	29,000	32,800	37,000	+1.2	-0.7	+1.1	+1.1	+1.2	+1.2
Greensville County	10,620[c/]	9,604	9,000	8,500	8,100	8,000	8,000	-0.9	-0.9	-0.5	-0.4	-0.3	*
Prince George County[f/]	20,270	29,092	28,000	36,000	46,000	58,500	72,600	+3.7	-0.4	+2.5	+2.5	+2.4	+2.2
Surry County	6,220	5,882	5,600	5,500	5,400	5,400	5,400	-0.5	-0.5	-0.1	-0.1	*	*
Sussex County	12,411	11,464	11,200	11,000	11,000	11,000	11,200	-0.7	-0.2	-0.1	*	*	+0.1
Colonial Heights City	9,587	15,097	20,000	24,000	28,200	32,800	37,600	+4.7	+2.9	+1.8	+1.6	+1.5	+1.4
Emporia City	5,535[c/]	5,300	5,100	5,000	4,900	4,800	4,800	-0.4	-0.4	-0.2	-0.2	-0.2	*
Hopewell City	17,895	23,471	25,800	27,500	28,900	30,200	31,400	+2.8	+1.0	+0.6	+0.5	+0.4	+0.4
Petersburg City[f/]	36,750	36,103	50,000	55,000	58,500	61,500	64,000	-0.2	+3.3	+0.9	+0.6	+0.5	+0.4
Planning District Twenty	666,841	769,371	871,200	983,000	1,103,000	1,235,000	1,384,000	+1.4	+1.3	+1.2	+1.1	+1.1	+1.1
Southeastern Virginia PDC													
Isle of Wight County	17,164	18,285	20,000	23,000	26,700	31,200	36,600	+0.6	+1.0	+1.4	+1.5	+1.6	+1.6
Nansemond County	31,366	35,166	40,000	46,000	53,400	62,000	72,000	+1.2	+1.3	+1.4	+1.5	+1.5	+1.5
Southampton County[c/]	19,931	18,582	18,000	17,500	17,000	16,800	16,800	-0.7	-0.3	-0.2	-0.2	*	*
Chesapeake City[c/]	73,647	89,580	110,000	132,000	155,000	178,000	200,600	+2.0	+2.1	+1.8	+1.6	+1.4	+1.2
Franklin City[c/]	7,264	6,880	6,700	6,500	6,400	6,400	6,400	-0.5	-0.3	-0.3	-0.1	*	*
Norfolk City	304,869	307,951	311,000	312,000	311,000	310,000	310,000	+0.1	+0.1	*	*	*	*
Portsmouth City	114,773	110,963	109,000	107,500	106,500	106,000	105,000	-0.3	-0.2	-0.1	*	*	*
Suffolk City	12,609	9,858	9,000	8,500	8,200	8,000	8,000	-2.0	-0.9	-0.5	-0.3	-0.2	*
Virginia Beach City[c/]	85,218	172,106	247,500	330,000	418,800	516,600	628,600	+7.3	+3.7	+2.9	+2.4	+2.2	+2.0

PLAINTIFFS' (DuVAL) EXHIBIT 25

POPULATIONS PROJECTIONS TO 1980, 1990, 2000, 2010, AND 2020, FOR VIRGINIA COUNTIES, CITIES, AND PLANNING DISTRICTS[a/] (Cont.)

	Actual (Census)		Projections					Average Annual Rates of Change					
	1960	1970	1980[b/]	1990	2000	2010	2020	1960-80	1970-80	1980-90	1990-2000	2000-2010	2010-2020
Planning District Twenty-one Peninsula PDC	242,874	319,081	400,000	480,000	562,000	647,000	740,000	+2.8	+2.3	+1.8	+1.5	+1.4	+1.3
James City County[c/]	10,449	17,853	24,000	32,000	42,200	54,000	67,000	+5.5	+3.0	+2.9	+2.8	+2.5	+2.2
York County[c/]	21,143	33,203	50,000	72,000	98,600	132,500	178,000	+4.4	+4.2	+3.7	+3.4	+3.0	+3.0
Hampton City	89,258	120,779	150,000	175,000	197,200	217,900	236,000	+3.1	+2.2	+1.5	+1.2	+1.0	+0.8
Newport News City	113,662	138,177	166,000	190,000	212,000	229,600	245,000	+2.0	+1.9	+1.3	+1.1	+0.8	+0.6
Williamsburg City[c/]	8,362	9,069	10,000	11,000	12,000	13,000	14,000	+0.8	+1.0	+0.9	+0.9	+0.8	+0.8
Planning District Twenty-two (Not yet named)	47,601	43,446	41,500	40,700	40,300	40,000	41,000	-0.9	-0.4	-0.1	*	*	+0.2
Accomack County	30,635	29,004	28,000	27,500	27,300	27,000	27,500	-0.5	-0.3	-0.1	*	*	+0.1
Northampton County	16,966	14,442	13,500	13,200	13,000	13,000	13,500	-1.4	-0.6	-0.2	-0.1	*	+0.3

Note: Due to rounding there are slight differences between growth rates of the localities and the growth rates of the planning district totals; * = less than 0.1 percent but greater than -0.1 percent.

a/ It is assumed that the present city and county boundaries will remain the same.

b/ The 1980 population projections are provisional and subject to change as economic base studies are completed or revised.

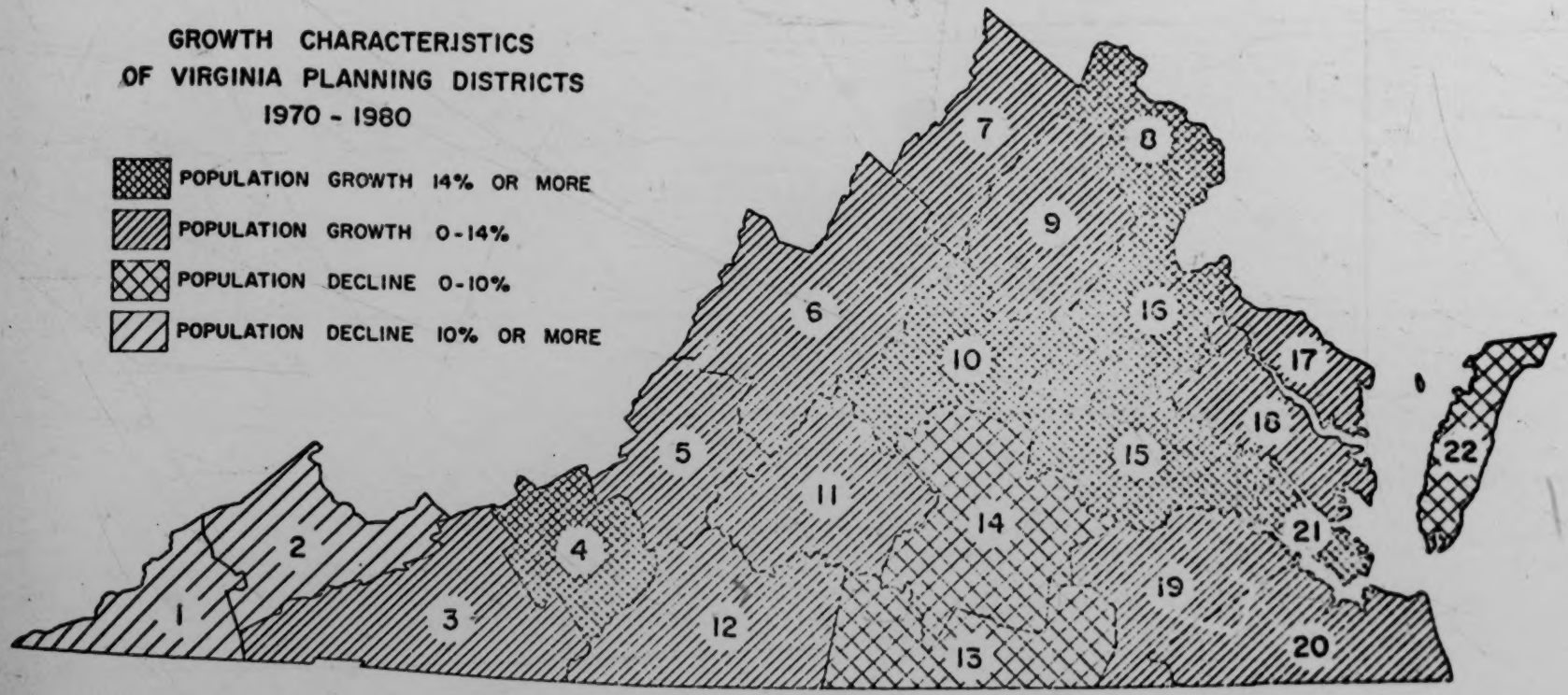
c/ The 1960 population figures have been adjusted in order to reflect annexations and the creation of independent cities during the 1960 to 1970 period.

d/ Adjustments have been made in the Frederick County and Winchester City population projections. Effective January 1, 1971, the county of Frederick annexed 5.9 square miles and approximately 4,900 residents from the city of Winchester. The 1960 and 1970 Frederick County and Winchester City figures have not been altered.

e/ Adjustments have been made in the Richmond City and Chesterfield County population figures for both 1960 and 1970 to allow for the January 1, 1970 annexation of 47,262 Chesterfield County residents by the City of Richmond.

f/ Adjustments have been made in the Dinwiddie County, Prince George County and Petersburg City population projections. To become effective, if upheld on a possible appeal, the city will gain 14.12 square miles of territory from the two counties. The Petersburg City population will be increased by approximately 9,000 persons, 5,500 of which will come from Prince George County and 3,500 from Dinwiddie County. The 1960 and 1970 Prince George County, Dinwiddie County and Petersburg City figures have not been altered.

PLAINTIFFS' (DuVAL) EXHIBIT 25



PLAINTIFFS' (DeVAL) EXHIBIT 25

PLAINTIFFS' (DuVAL) EXHIBIT 26

Comparison of 1971 Representation of Northern Virginia[1] Under Congressional, Virginia Senate and Virginia House of Delegates Reapportionment and By Percentage of Population

Northern Virginia Congressional Seats	Total Virginia Congressional Seats	Northern Virginia Percentage
2 (8th and 10)	10	20

Northern Virginia Senate Seats	Total Virginia Senate Seats	Northern Virginia Percentage
8 (29th-36th, inclusive)	40	20

Northern Virginia House of Delegates	Total Virginia House of Delegates Seats	Northern Virginia Percentage
19 (18th-23rd, inclusive)	100	19

Total Northern Virginia 1970 Population as a Percentage of Total Virginia

$$\frac{\text{Northern Virginia}}{\text{Total Virginia}} \quad \frac{921{,}237}{4{,}648{,}494} \times 100 = 19.82\%$$

[1] Northern Virginia is defined as the Cities of Alexandria, Falls Church and Fairfax, and the Counties of Arlington, Fairfax, Loudoun and Prince William.

PLAINTIFFS' (DuVAL) EXHIBIT 30

Summary of Statistical Data of Virginia's 1971 Legislative Redistricting

Total State Population	4,648,494
Senate—	
1) Number of seats in senate (from 40 districts)	40
2) Average, or "ideal" population per senator	116,212
3) Largest population per senator	122,242
4) Smallest population per senator	110,938
5) Greatest plus and minus deviations from average:	+5.2% —4.5%
6) Average percentage variance	±2.19%
7) Minimum population necessary to elect 21 senators (a majority of senate)	2,389,703 or 51.4%
House of Delegates—	
1) Number of seats in house (from 52 districts)	100
2) Average or "ideal" population per representative	46,485
3) Largest population per representative*	50,964
4) Smallest population per representative*	43,319

5) Greatest plus and minus deviations from average*	+9.6% —6.8%
5a) Greatest plus and minus deviation from average, including floater districts	+9.6%
(Chesapeake floater)	—14.0%
6) Average percentage variance*	±3.89%
7) Minimum population necessary to elect 51 representatives (a majority of house)*	2,321,704 or 49.9%
8) Minimum population necessary to elect fifty-one representatives (a majority of house)**	2,291,543 or 49.29%

*Excludes floater districts and districts containing localities also represented in floater districts.

**Includes floater districts and districts containing localities also represented in floater districts.

March 24, 1971

Explanation of Computations in "Statistical Data of Virginia's 1971 Legislative Redistricting"

Most of the seven items for each legislative house are virtually self explanatory. But the following summary indicates how the figures were derived and their significance.

1.) Number of seats in house (and number of districts electing them). The number of seats in each chamber are those allocated in the redistricting. All 40 Senate seats are elected from single member districts; thus, the 40 Senators are elected from 40 districts. The 100 seats in the House of Delegates are elected from both single and multi-member districts; thus the 100 Delegates are elected from only 52 districts.

2.) Average, or "ideal," population per senator or delegate. The figure indicates how many people ideally ought to be represented by each legislator in each chamber. The figure is obtained by dividing the total State population (4,648,494) by the number of seats in each chamber, and is the figure from which deviations are calculated.

3.) Largest population per senator or delegate. The figure represents the largest population represented by any senator or delegate, exclusive in Virginia of those elected from either floater districts or districts including localities also represented in floater districts. The exclusion is justified because floater districts typically are extraordinarily large in population size because they are used to compensate for underrepresentation of some localities in regular districts by providing them with additional representation in the floater districts.

The population per senator or delegate is the total population of a single-member district or the total population of a multi-member district divided by the number of legislators elected from that district.

4.) See number 3.) above.

5.) Greatest plus and minus deviations from average. The figure represents the largest departures in the actual population size of districts (largest and smallest population per legislator) from the ideal population per legislator. The figure is calculated by subtracting the ideal population per legislator from the actual population per legislator, and dividing the result by the ideal population per legislator.

The figure represents the extremes of over-and under-representation in each legislative chamber, expressed as a percentage; or, put another way, it represents the maximum deviations, plus and minus, from population equality in each chamber.

6.) Average percentage variance. The figure represents the average percentage by which the actual populations represented by each legislator in each chamber vary from the ideal population per legislator. It is calculated by totaling all, plus and minus, of the deviations per legislator in a chamber and dividing the sum by the number of legislators.

The figure represents a measure of how close to population equality is the apportionment of an entire chamber. The smaller the average variance, the greater the overall apportionment of the chamber approximates population equality.

7.) Minimum population necessary to elect a majority of each house (21 in the Senate; 51 in the House of Delegates). This figure represents the least population in the State that theoretically can elect a majority of the members

of each legislative chamber. It is calculated by totaling the average populations per legislator from the smallest to the larger (adjusting for multi-member districts) until a majority of legislators is accounted for. The sum is then divided by the total State population to produce the proportion (percent) of the State's population that can elect a majority of the members of each legislative house.

The figure represents a measure of the overall representativeness of an entire legislative chamber. The closer that the figure approximates the percent that ideally would elect a majority of the chamber if all legislators represented equal populations, the more representative is the chamber. The ideal percentage is calculated by multiplying the average (ideal) population per legislator by the number of legislators that would constitute a bare majority in the chamber.

In Virginia, the ideal percentages are 52.5% for the Senate and 51.0% for the House of Delegates.

DEFENDANTS' (JOAN S. MAHAN) EXHIBIT 7

Exhibit

Prior Legislative History

It is hereby stipulated through the following Exhibit that prior legislative history of the House Reapportionment Act, insofar as pertinent, is as follows:

Preliminary proposal emanating from the House Privileges and Election Committee was to give Norfolk City six (6) delegates, Virginia Beach three (3) delegates, Portsmouth two (2) delegates, with a Floater for all three jurisdictions.

In Northern Virginia, Fairfax County, Fairfax City and Falls Church would receive ten (10) delegates. Prince William and Loudoun Counties would be combined and would receive three (3) delegates, with a Floater representing all jurisdictions.

The Floater in Northern Virginia was subsequently abolished by a floor amendment resulting in the present plan.

Norfolk City received the seven (7) delegates, and a Floater was established among the cities of Virginia Beach, Chesapeake and Portsmouth.

Calculated below are the numerical computations for the Floater Districts in the Tidewater and Northern Virginia areas prior to the amendment by the General Assembly described above. The present percentage deviation is reflected in plaintiff's Exhibits.

Percentage Deviation from Norm (46,485)

The percentage deviation from the Statewide average population per delegate for a district which also is a part of a Floater District can be calculated by first adjusting

for the Floater. This is done by calculating what "share" of the Floater District delegate belongs to each of the regular districts which make it up. This "share" is then added to the number of delegates of the regular district to give the total number of representatives for this district. Dividing this number into the total population of the district gives the population per delegate and the percentage deviation can then be calculated.

District Forty-two (42) [Norfolk], for example, has six delegates plus .52 share of the Floater District:

$$\left(\frac{307{,}951}{591{,}020} = .52\right)$$

The population of District 42 (307,951) divided by 6.52 delegates equals 47,232 population per delegate, which is 1.6 percent above the norm.

District	Delegates	Population	Pop./ Del.	% Deviation
42—				
Norfolk	6.52(1)	307,951	47,232	+ 1.6%
43—				
Virginia Beach	3.29(1)	172,106	52,312	+14.7%
44—				
Portsmouth	2.19(1)	110,963	50,668	+ 9.0%
	12.00			
20—				
Fairfax County		455,021		
Fairfax City		21,970		
Falls Church		10,772		
	10.77(2)	487,763	45,289	— 2.6%

21— Loudoun Prince William		37,150 111,102		
	3.23	148,252	45,898	— 1.3%
	14.00(2)			

(1) Floater District 12, shares for Districts 42, 43, 44
42 (Norfolk) 307,951 / 591,020 = .52
43 (Virginia Beach) 172,106 / 591,020 = .29
44 (Portsmouth) 110,963 / 591,020 = .19

(2) Floater District 22, shares
20—487,763 / 636,015 = .77
21—148,252 / 636,015 = .23

"Share" or Proportion of Delegates

Another way of comparing representation is to examine actual number of delegates, including shares of a Floater, which a district has to the "ideal" number of delegates. The "ideal" number of delegates would equal the district population divided by the average Statewide population per delegate (46,485).

The actual number of delegates, including shares of Floaters was computed for the percent deviations earlier.

District	Population	Actual Share Of Delegates	Ideal Share
42— Norfolk	307,951	6.52 (—.10)	6.62
43— Virginia Beach	172,106	3.29 (—.41)	3.70
44— Portsmouth	110,963	2.19 (—.20)	2.39
20— Fairfax County Fairfax City Falls Church	487,763	10.77 (+.28)	10.49
21— Loudoun Prince William	148,252	3.23 (+.04)	3.19

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ICT

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

DOCKET ENTRIES

No. .....

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March 2—Complaint filed.

March 2—Summons, with 10 copies, issued and delivered to Marshal.

March 3—Certificate of service on Atty. Gen. of Va., filed.

March 11—Petition for temporary restraining order to prevent irreparable damage pending determination of cause, filed.

March 11—Affidavit of Professor T. J. Reed, filed.

March 15—Notification and request for designation of three-judge Court, filed. JAM, Judge.

March 15—Designation of three-judge Court, Honorable Albert V. Bryan, U.S. Circuit Judge, Honorable Robert R. Merhige, Jr., U.S. District Judge, and Honorable John A. MacKenzie, U.S. District Judge, filed. (entered 3-12-71 by CFH, Chf. J.)

March 15—Summons returned executed March 3rd, 1971, as to Joan S. Mahan, Executive Sec., State Board of Elections, A. Linwood Holton, Gov. of Va., Terry H. Davis, Jr., Member, Elec. Brd., City of Norfolk and Donnel P. Davis, Member, Elec. Brd., Virginia Beach, and executed March 4th as to J. Hume Taylor, Jr., Member, Elec. Brd., Norfolk, John B. James, Member, Elec. Brd., Va. Bch., and Catherine Nixon, Member, Elec. Brd., Va. Bch., and executed 3-5-71 as to U. P. Joyner, Jr., Member, State Brd. of Elec., executed 3-10-71 as

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to Edgar A. Prichard, Member, State Brd. of Elec., and executed 3-11-71 as to James Griffiths, Member Elec. Brd., Norfolk, and filed,

March 16—Pre-trial proceedings in Richmond: RRM, Jr., Judge. Plaintiff and counsel appeared. Opening briefs: plaintiff, 5-3-71, defendant, 5-14-71 and plaintiff's reply brief, 5-19-71. Exhibits to be filed with clerk by 4-27-71. Plaintiffs to reply to defendants answer with 7 days after answers filed. Trial date: May 24, 1971. Copies of all pleadings to be sent all counsel and each judge. Plaintiff's discovery cutoff 4-17-71 and defendant's 4-27-71.

March 22—Order on above pretrial conference, setting forth above dates and further that plaintiffs' exhibits shall be marked in sequence commencing with PX-1; and defendants' shall be marked commencing with DX-1, etc., hearing on all motions be deferred until hearing on merits; all parties shall file with Clerk their proposed findings of fact on or before May 20, 1971, etc., entered in Richmond and filed in Richmond March 17, 1971. RRM, Jr., Judge. Copies mailed to counsel and the three judges.

March 22—Defendants' answer to petition for temporary restraining order filed.

March 23—Answer filed by Joan S. Mahan, Edgar A. Prichard, U. P. Joyner, Jr. and A. Linwood Holton, et al., to complaint.

March 23—Trial proceedings: JAM, Judge. Messrs. Henry E. Howell, Jr. and Peter K. Babalas appeared as counsel for plaintiff. Messrs. Andrew P. Miller, Anthony F. Troy and Joseph Campbell appeared as counsel for defendants. Matter came on for hearing on plaintiffs' pe-

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tition for temporary restraining order. Evidence presented and arguments of counsel heard. Counsel granted opportunity to file additional authorities if they desire. Court advised counsel that ruling would be under advisement until after the Virginia General Assembly meets on March 29, 1971.

March 25—Petition for leave to intervene filed by City of Norfolk.

March 25—Affidavit supporting the City of Norfolk's petition filed.

March 25—Notice to counsel filed.

March 29—Order that the City of Norfolk be made a party defendant and be allowed to answer complaint of plaintiffs, entered and filed. JAM, Judge. Notice to all counsel of record.

March 29—Answer of City of Norfolk to complaint filed.

April 2—Notice to take depositions filed by plaintiffs.

April 2—Order that defendants' motion to have this court declare itself without jurisdiction to enter proper order for temporary restraining order is denied; and plaintiffs' motion for restraining order is denied, entered and filed. JAM, Judge. Notice—copies to counsel and judges.

April 7—Order granting plaintiffs leave to file amended complaint, entered 4-5-71 and filed. JAM, Judge. Notice.

April 7—Amended complaint filed.

April 7—Order that prayers contained in amended complaint for a temporary restraining order are denied, entered by judges of three-judge court, and filed. Copies to counsel and judges.

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April 7—Order that this matter is set for argument in Richmond at 2:00 P.M., Monday, May 24, 1971, entered and filed. JAM, Judge. Copies to all counsel and judges.

April 8—Stipulation filed by parties.

April 9—Petition for leave to intervene filed by City of Virginia Beach.

April 9—Affidavit supporting petition for leave to intervene filed.

April 9—Notice of hearing for above petition filed. (April 16, 1971)

April 12—Transcript of proceedings on March 23, 1971 filed. (Copies made and mailed to the Judges.)

April 16—Order that the City of Virginia Beach is made a party defendant and is to file such pleadings as it deems necessary, but such intervention shall not serve to enlarge or extend discovery cut-off dates or hearing date, entered and filed. JAM, Judge. Copies to counsel and Judges.

April 16—Answer filed by City of Virginia Beach.

April 21—Bound volume containing exhibits received from plaintiffs.

April 23—Exhibit No. 1 received from City of Norfolk.

April 23—Stipulation filed by the City of Norfolk.

May 3—Brief on behalf of plaintiffs received.

May 3—Depositions of witnesses received from plaintiffs. (witnesses: Senator H. B. Andrews, L. B. Wood and Professor T. J. Reed)

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May 14—Memorandum filed by the Court in Richmond May 13, 1971. RRM, Jr.

May 14—Order that each of the parties file within seven days of May 13, 1971, such memoranda as they deem appropriate concerning the matters referred to in Court's memorandum; United States requested to file such memorandum as Amicus curiae, entered and filed May 13, 1971 in Richmond. RRM, Jr., Judge. Copies of memorandum and order mailed to all counsel and Attorney General for United States by Clerk in Richmond.

May 14—Brief received from City of Norfolk. (counsel mailed copies to Court)

May 17—Brief on behalf of intervenor, City of Virginia Beach, received. (counsel mailed copies to Court)

May 18—Brief on behalf of the Commonwealth of Virginia received. (Counsel mailed copies to Court)

May 19—Plaintiffs' brief in reply to defendants' brief received.

May 19—Plaintiffs' supplementary memorandum requested by the Court regarding 1965 Voting Rights Act received.

May 20—Findings of Fact and Conclusions of Law received from Intervenor, City of Norfolk.

May 20—Memorandum of the Intervenor, City of Norfolk, received.

May 20—Plaintiffs' proposed findings of fact and conclusions of law received.

May 24—Defendants' proposed findings of fact and conclusions of law received in Richmond.

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May 24—Trial proceedings in Richmond—Judges Bryan, MacKenzie and Merhige. Heard with C/A 111-71-A and C/A 174-71-R. Counsel appeared. Oral orgument. Order entered by panel as follows: (a) Trial is continued. (b) Primary election of Virginia set for June 8 is posponed until Sept. 14, 1971 (c) Unless Virginia Adopts reapportionment on or before June 15, 1971, Court shall proceed with trial and thereafter formulate a plan of reapportionment within the prescription of the Voting Rights Act and resolving the valid objections, if any, of the plaintiffs to the 1971 reapportionment legislation, and (d) jurisdiction of suit be retained by the Court until further order. Court adjourned.

May 24—Order entered on above rulings, and filed in Richmond.

June 1—Motion filed by the Attorney General of Virginia that Court amend its order of May 24, 1971 to allow General Assembly of Virginia to adopt and submit reapportionment legislation either to the Attorney General of the U.S. or to District Court of the District of Columbia for declaratory judgment, on or before June 24, 1971.

June 10—Order entered in Richmond that Attorney General's motion that Court's order of May 24, 1971 be amended is denied, entered and filed June 2, 1971. RRM, Jr., Judge.

June 2—Pltf-Inv. opposition to defts.' motion to amend filed.

June 3—Plaintiffs' answer to motion filed by Attorney General of Virginia, filed

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June 10—Plaintiffs' motion for modification of order of May 24, 1971, and to fix date for trial, filed.

June 14—Order that a hearing on the remaining issues is set commencing at 10:30 A.M. on June 16, 1971, at the direction of the panel, entered and filed June 11, 1971 in Richmond. RRM, Jr., Judge.

June 16—Trial proceedings: AVB, RRM, Jr. and JAM, Judges—Parties appeared by counsel. Case argued.

June 16—Mot. of Mahan et al. to amend pre-trial order filed.

July 2—Opinion filed. ob

July 2—Interlocutory order that Acts of General Assembly of Virginia generally known as the reapportionment statutes of 1971, etc. is hereby declared invalid on ground that they include provisions violating Equal Protection Clause of the Constitution; that members of Senate and House of Delegates be elected from the electoral districts described in opinion, etc.; that such of defendants as are charged by law with conduct of said elections is enjoined and restrained from conducting any of said elections except those established and specified in opinion; That the Governor and the Attorney General of Virginia are dropped as parties to these actions (consolidated with C/A 111-71-A and 174-71-R); that plaintiffs recover costs allowed by law, and that jurisdiction of suit is retained for enforcement of this order, the determination of any related matter, and for any other appropriate purpose, entered at 1 P.M. July 2, 1971 in Alexander, Richmond and Norfolk, Virginia, and certified copy filed in Norfolk. AVB, ORL, JAM and RRM, Jr. Copies to all counsel by Court. ob

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July 13—Notice of appeal filed behalf of defendants, Joan S. Mahan, U. P. Joyner, Jr. and Edgar A. Prichard, Members, Virginia State Board of Elections filed.

July 13—Motion for stay of judgment pending appeal filed behalf of the defendants.

July 13—Petition of City of Virginia Beach for an order relieving it from ruling of Court.

July 13—Petition of City of Virginia Beach for stay of proceedings, filed.

July 13—Trial Proceedings: JAMacK, judge. Appearances; Henry E. Howell for plaintiffs, Andrew P. Miller, Atty. Gen., Anthony Troy, Ass't. Atty. Gen. and Vann Lefcoe, Ass't. Atty. Gen. on behalf of defendants, Gordon D. Tayloe, Ass't. City Atty. behalf of City of Norfolk; and J. Dale Bimson, City Atty. on behalf of City of Virginia Beach, Virginia. Matter came on for hearing on defendants' motion to stay order of July 2, 1971, pending appeal to U.S. Supreme Court and motion of Virginia Beach for stay and rehearing. Arguments heard. Order Denying motion for a stay pending appeal and the petition for rehearing by Virginia Beach entered and filed in open Court. (docketed July 14, 1971 and copy placed on o.b.) (Copies handed Messrs. Howell, Bimson, Tayloe & Atty. Gen.)

July 14—C. copies of above order mailed Messrs. Babalas, Campbell, Evans and Hunton, Wms., Gay, Powell & Gibson.

July 15—Notice of appeal to Supreme Court filed for City of Virginia Beach.

Dec. 10—Designation of record on appeal by defendants Joan S. Mahan, etc., et al., filed.

COMPLAINT

Howell, et al. v. Mahan, et al.

Voters' Complaint To Correct Unconstitutional Redistricting Of The Senate Of The General Assembly Of The Commonwealth Of Virginia

I.

This Court has original jurisdiction of this action pursuant to 28 United States Code, Section 1343(3) and the plaintiffs have a right to bring this suit pursuant to the Civil Rights Act of the United States, 42 United States Code, Sections 1983, 1988.

II.

Under the provisions of 28 United States Code, Sections 2281 and 2284, special provision is made for hearing causes of action involving an interlocutory or permanent injunction restraining the enforcement, operation or execution of any state statute or an order made by an administrative board or commission acting under state statute, whenever said application is based on the unconstitutionality of such statute.

III.

The plaintiff, Henry E. Howell, Jr., is a citizen, voter and taxpayer of the City of Norfolk, the Commonwealth of Virginia and the United States of America, and resides at 1117 Cambridge Crescent, in the City of Norfolk, Virginia, in what has been designated under the Redistricting Act which is the subject of this complaint, as the Fifth Senatorial District. He is presently a duly elected Senator to the General Assembly of Virginia from the City of Norfolk, Virginia, and intends to be a candidate for re-election to said office, subject to elections to be held this year.

IV.

The plaintiff, Peter K. Babalas, is a citizen, voter and taxpayer of the City of Norfolk, the Commonwealth of Virginia and the United States of America, and resides at 164 West Belvedere Road, in the City of Norfolk, Virginia, in what has been designated under the Redistricting Act which is the subject of this complaint, as the Sixth Senatorial District. He is presently a duly elected Senator to the General Assembly of Virginia from the City of Norfolk, Virginia, and intends to be a candidate for re-election to said office, subject to elections to be held this year.

V.

The plaintiff, Angeline V. Fitzpatrick, is a citizen, voter and taxpayer of the City of Norfolk, Virginia, the Commonwealth of Virginia, and the United States of America, and resides at 136 Cherry Street, in the City of Norfolk, the said address being located on the northerly side of said Cherry Street, in what has been designated under the Redistricting Act which is the subject of this complaint as the Sixth Senatorial District.

VI.

The plaintiff, Reverend Lawrence L. Craig, is a citizen, voter and taxpayer of the City of Norfolk, Virginia, the Commonwealth of Virginia, and the United States of America and resides at 525 West 27th Street, in the City of Norfolk, the said address being located in what has been designated under the Redistricting Act which is the subject of this complaint as the Fifth Senatorial District. Plaintiff is the duly elected Democratic Committeeman for Precinct Fourteen in said City of Norfolk.

VII.

The plaintiff, William K. Beach, is a citizen, voter and taxpayer of the City of Norfolk, the Commonwealth of Virginia, and the United States of America, and resides at 2037 Kingston Avenue, in the City of Norfolk, in what has been designated under the Redistricting Act which is the subject of this complaint as the Seventh Senatorial District.

VIII.

Each of the plaintiffs herein is entitled to vote for members of the General Assembly of the Commonwealth of Virginia and they bring this action in their own behalf and on behalf of all other voters similarly situated in the Commonwealth of Virginia.

IX.

Defendants and each of them are citizens of the United States and of the Commonwealth of Virginia and are sued in their representative capacities as hereinafter set forth:

a. The defendants, Joan S. Mahan, Edgar A. Prichard and U. P. Joyner, Jr., are members of the State Board of Elections of the Commonwealth of Virginia, the defendant, Joan S. Mahan, being the Secretary thereof, and as such, said defendants are charged with supervising and coordinating the work of the City and County electoral boards, making rules and regulations for the conduct of elections, preparing forms and records for the registration of voters and performing other duties in respect of primary and general elections.

b. The defendant, A. Linwood Holton, is Governor and Chief Executive Officer of the Commonwealth of Virginia and on March 2, 1971, signed into law the legislative en-

actment that created the unconstitutional redistricting involving the Fifth, Sixth and Seventh Senatorial Districts, and as Chief Executive Officer of the Commonwealth of Virginia is the officer who would be required to call any Special Session of the Virginia General Assembly that may be directed by this Court, and under 28 United States Code, Section 2284, must be notified of any action in a United States Court involving the enforcement of a state statute, and for these reasons should be a party to this suit.

c. The defendants, Terry H. Davis, Jr., James Griffiths and J. Hume Taylor, Jr., are members of the Electoral Board of the City of Norfolk, Virginia, and as such said defendants are charged with the duty of the preparation of the ballots and voting machines and the conduct of elections within the City of Norfolk, Virginia, establishing voting precincts, canvassing the result of elections and performing other duties in connection with the election process in primary and general elections.

d. The defendants, John B. James, Donnell P. Davis and Catherine Nixon, are members of the Electoral Board of the City of Virginia Beach, Virginia, and as such said defendants are charged with the duty of the preparation of the ballots and voting machines and the conduct of elections within the City of Virginia Beach, Virginia, establishing voting precincts, canvassing the result of elections and performing other duties in connection with the election process in primary and general elections.

X.

Plaintiffs now are denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and plaintiffs bring this

cause of action on their own behalf and on behalf of the voters in the City of Norfolk, Virginia, and in Virginia, who are similarly situated. Plaintiffs seek a declaration of the validity or invalidity of the acts or statutes of the Commonwealth of Virginia which apportion and district members of the Senate of Virginia, and in particular as the said Act applies to the citizens and voters of the City of Norfolk, Virginia. They further seek such injunctive relief as may be proper to assure them and all other voters similarly situated the free and equal franchise, the free and equal right to campaign as candidates, and the free and equal right for candidates to campaign and the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States, and which rights are now being denied them by the defendants who have and/or will comply with certain unconstitutional statutes and private acts as more particularly set forth.

XI.

Sections 40 to 43, inclusive of the Constitution of Virginia, applicable at the time of the filing of this suit, provide that the legislative power of the Commonwealth shall vested in the General Assembly, which shall consist of the Senate and House of Delegates and that the Senate shall consist of not more than forty (40) members and not less than thirty-three (33) members, who shall be elected quadrennially by the voters of the several Senatorial districts: that the House of Delegates shall consist of not more than one hundred (100) members and not less than ninety (90) members, who shall be elected biennially by the voters in the several House districts and that a reapportionment of the Commonwealth and the Senatorial and House districts shall be made in the year 1932 and every ten (10) years

thereafter. Article 2, Section 6, of the Constitution of Virginia, as amended, provides, in so far as it is applicable to the allegations of this complaint, that the General Assembly shall reapportion the Commonwealth into electoral districts in accordance with the section in the year 1971 and every ten (10) years thereafter. On Friday, February 26, 1971, the General Assembly of Virginia gave final approval to a bill entitled "Committee Amendment In The Nature Of A Substitute For Senate Bill No. 54—A bill to amend the Code of Virginia by adding a section numbered 24.1-14.1 and to repeal § 24.1-14 of the Code of Virginia, the amended and repealed sections relating to State Senatorial Districts." A copy of said Bill is attached to this complaint marked as Exhibit "A" and incorporated herein by reference. The citizens and voters of the City of Norfolk, Virginia, are allocated to Senatorial Districts Fifth, Sixth and Seventh.

XII.

The census enumeration for 1970 allocates 4,648,494 persons to the State of Virginia, 307,951 persons to the City of Norfolk and 172,106 persons to the City of Virginia Beach. The average number of persons per Senator is 116,212. Norfolk is entitled to 2.64 Senators.

XIII.

During the latter portion of the Special Session of the General Assembly, which was convened on January 6, 1971, the Senate Privileges and Elections Committee announced, without stating any reasons whatsoever therefor, that it had decided to divide Norfolk into single members districts and, thereafter, a Sub-committee of the Privileges and Elections Committee, the chairman of which Sub-committee

was Senator Hunter B. Andrews, directed that the City of Norfolk, Virginia, be divided into districts running in a north-south direction and, for the first time in the history of legislative redistricting, census enumeration tracts would be used in determining the population within said districts. Said decision was arbitrary and without rational basis. The City of Norfolk, Virginia, which is the home of the largest naval installation in the world, the Bureau of Census of the United States Department of Commerce, as a matter of convenience in enumerating and allocating men attached to naval vessels and who live in the Greater Norfolk Area, counted said crew members with respect to their persons aboard vessels home ported at Norfolk, Virginia. At the time the 1970 census was taken the Bureau of Census assigned tract No. 000999 to the naval personnel stationed aboard naval vessels home ported at Norfolk, Virginia, and the count was 36,693 naval personnel. In addition, the Bureau of Census enumerated on census tract 0009, 13,427 persons living in military housing on government property, all within the Fifth Senatorial District. The Census tracts and population count allocated to the tracts for Norfolk compiled by the Bureau of Census, United States Department of Commerce, is marked as Exhibit "B" attached to this complaint and incorporated herein by reference. The Census tracts and population count allocated to the tracts for Virginia Beach compiled by the Bureau of Census, United States Department of Commerce, is marked as Exhibit "C" and attached to this complaint and incorporated herein by reference. Attached to the original of this complaint are maps showing the outlines of Senatorial Districts Fifth and Sixth, as well as the 75,000 people of the City of Norfolk that are joined by approximately 40,000 people residing in that portion of the City of Virginia Beach immediately

adjacent to the City of Norfolk, which will comprise the Seventh Senatorial District. Said maps are marked as Exhibit "D" for the purpose of identification and made a part of this complaint by reference.

XIV.

Whereas 36,693 persons allocated to Senatorial District Fifth were enumerated with respect to where they work, namely, aboard naval vessels home ported at Norfolk, all other persons in the Fifth District, the Sixth District and that part of the City of Norfolk that is included in the Seventh District, were enumerated with respect to where they live. Approximately one-half or 18,346 of the men enumerated aboard vessels home ported at Norfolk live ashore and only a small percentage of these thousands of persons live within the limits of the Fifth District. See the affidavit of Bernard L. Michel and the letter of Rear Admiral J. O. Cobb, Commandant, Fifth Naval District, referred to in said affidavit, all of which is marked as Exhibit "E" attached hereto and by reference made a part hereof. It is conservatively estimated and alleged that more than 10,000 of the 36,693 men that have been allocated to the population of the Fifth Senatorial District do not live in the Fifth Senatorial District and cannot vote for a candidate in that district. By reason of this fact, the Fifth Senatorial District is substantially underpopulated and the Sixth and Seventh Senatorial Districts are overpopulated without rational basis and in such a manner as to effect invidious discrimination with respect to the plaintiffs and others similarly situated.

XV.

By reason of Naval Instruction 5726.4A issued 3 June 1970, a copy of which is attached to this complaint marked

as Exhibit "F" and by reference made a part hereof, a candidate in the Fifth Senatorial District is prohibited from engaging in normal campaign communications, meetings and other types of political activity traditional to an election for public office in the United States of America, the State of Virginia and the City of Norfolk, Virginia. The provisions of 18 United States Code, Section 1382, which is incorporated and referred to in Naval Instruction 5726.4A would make a candidate guilty of a misdemeanor if he were to campaign on said governmental property where 50,120 persons, or approximately Forty-Three (43%) Per Cent of the total persons allocated to the Fifth Senatorial District either work or reside. In the Sixth Senatorial District no such handicap is imposed upon the candidate. The isolation of 50,120 persons out of the total of approximately 116,212 illegally and unjustly discriminates against a candidate running in the Fifth Senatorial District and deprives him of the normal exposure to registered voters and domiciliary residents that make up the other Senatorial districts.

XVI.

Whereas in the City of Norfolk, citizens living on one side of a street were placed in one District and citizens living on the opposite side of the street were placed in another Senatorial District in order to achieve precise adherence to the Senatorial norm of 116,212, substantial deviations from the norm *were permitted in other Senatorial Districts in order to preserve the historical geographical boundaries or to minimize the division of the same.* In support of said allegation is attached hereto marked Exhibit "G" and by reference made a part of this complaint the approximate population of the Senatorial Districts pre-

pared by the Division of Statutory Research and Drafting of the Commonwealth of Virginia.

XVII.

The impact of the military population heretofore referred to, has throughout the history of Norfolk been diffused by having the candidates for the Senate of Virginia run At Large, and such a plan is the only constitutional method for the apportionment of Senators in the City of Norfolk.

XVIII.

The effect of the current Redistricting Plan is to unconstitutionally dilute the minority vote in the City of Norfolk, Virginia.

XIX.

The plaintiff, Peter K. Babalas, is currently a member of the Senate of Virginia from the City of Norfolk, having been elected in an At Large election in Norfolk and by reason of the irregular distribution of naval personnel enumerated by the Census Bureau for convenience purposes aboard their vessels home ported at Norfolk, but who actually live in part in the Sixth District, the District in which he resides is overpopulated and the votes of the citizens in his district are devaluated to such an extent as to unjustly and invidiously discriminate against him and other citizens similarly situated.

XX.

The plaintiff, Angeline V. Fitzpatrick, avers that she has had the right to vote for Senators to the Virginia General Assembly from the City of Norfolk on an At Large basis; that in the elections in the years 1965 and 1967 she

had the right to use her vote to elect Three (3) Senators and one of the Senators for whom she voted in those years was the plaintiff, Henry E. Howell, Jr., who on those occasions resided at 1117 Cambridge Crescent, in the City of Norfolk, Virginia; that as a result of the arbitrary and irrational districting of the City of Norfolk the fact that she lives on the northerly side of Cherry Street will prevent and deprive her of the right to vote for Senator Henry E. Howell, Jr., so long as he continues to reside at the above address, although this plaintiff would like to continue to cast her vote for said individual. Said plaintiff further alleges that there is an unconstitutional deviation in population requiring more citizens to elect a Senator in her district, the Sixth Senatorial District, than in the Fifth Senatorial District.

XXI.

The plaintiff, Reverend Lawrence L. Craig, is a member of the Negro race, which race constitutes a minority of the population of the City of Norfolk, Virginia. Plaintiff avers that in At Large elections the aggregate number of votes possessed by his minority race are such that all candidates At Large seek to campaign with and to represent his minority, which is decisive in a contested At Large election, and that the effect of single-member districts has been to unconstitutionally dilute the weight and effectiveness of his vote and the vote of members of his minority race similarly situated. The plaintiff avers that the lines of the Fifth Senatorial District have been unconstitutionally drawn so as to prefer by race and color.

XXII.

The plaintiff, William K. Beach, avers that he has had the right to vote for State Senators from the City of Nor-

folk, on an At Large basis; that in the elections in the years 1965 and 1967 he had the right to use his vote to elect Three (3) Senators and one of the Senators for whom he voted in those years was the plaintiff, Henry E. Howell, Jr., who on those occasions resided at 1117 Cambridge Crescent in the City of Norfolk, Virginia; that as a result of the arbitrary and irrational districting of the City of Norfolk, the fact that he lives at 2037 Kingston Avenue in the City of Norfolk, will prevent and deprive him of the right to vote for Senator Henry E. Howell, Jr., so long as he continues to reside at the above address, although the plaintiff would like to continue to cast his vote for said individual. The said plaintiff further alleges that there is an unconstitutional deviation in population requiring more citizens to elect a Senator in his district, the Seventh Senatorial District, than in the Fifth Senatorial District.

XXIII.

Each plaintiff on behalf of himself and all voters similarly situated avers that the dividing into single member districts of a city such as the City of Norfolk, Virginia, diffuses and weakens the unity of representation that central city citizens need and are entitled to and that the disunity unconstitutionally dilutes the value of the vote of a central city as compared to the unity that will accrue to the less populated areas of Virginia, whose total population results in the allocation of a single Senator elected on at At Large basis.

XXIV.

The Reapportionment or Redistricting Act complained of has effected invidious discrimination in violation of the rights of the plaintiffs and other voters similarly situated under the Constitution of the United States.

XXV.

Plaintiffs aver that the constitutional requirements aforementioned can only be met by redistricting the cities of Norfolk and Virginia Beach so that two Senators run At Large and are voted upon by the qualified voters of the City of Norfolk, Virginia, and one Senator run At Large from the City of Virginia Beach, Virginia, to be voted upon by the qualified voters of the City of Virginia Beach, Virginia, or, in the alternative to be voted upon by the qualified voters of the City of Virginia Beach, Virginia, that does not include the Boroughs of Blackwater, Pungo and Princess Anne and which does not include the Oceana Naval Station as is referred to in the description of the Eighth Senatorial District, and a fourth Senator to be voted on by the combined votes of citizens of the City of Norfolk and Virginia Beach in direct proportion to their excess populations. Such a plan would diffuse and give representation in a constitutional manner to the military population which is distributed in an irregular manner throughout the Norfolk area and to the excess population in the two cities here involved.

XXVI.

The General Assembly of Virginia has been recessed until March 29, 1971, and in the meanwhile Primary elections are now scheduled to be held on June 8, 1971, and regular elections to be held November 2, 1971, and unless the inequities herein complained of are corrected by this court the plaintiffs and all other voters and candidates similarly situated will be denied the equal protection of the laws in said elections. The defendants, unless prevented by this Court, will perform their duties in the conduct of said elections in an unconstitutional manner.

XXVII.

The constitution and laws of the State of Virginia do not require the Virginia General Assembly to reapportion representation and to redistrict the City of Norfolk but once every ten (10) years. If this Honorable Court does not grant the relief herein sought and thereby afford relief to said plaintiffs and others similarly situated whereby they may obtain fair and equal representation in the Senate of the Virginia General Assembly, the said plaintiffs and others similarly situated will suffer irreparable damage and harm for the next ten (10) years, if not longer.

Wherefore, plaintiffs pray:

1. That process according to law may issue to the named defendants to this action.

2. This Court may take jurisdiction of the controversy.

3. That a special Three Judge Court be called and impaneled to hear and determine this action and declare the rights of the plaintiffs in the premises to be as follows:

a. That the present redistricting of the City of Norfolk and apportionment of Senators denies the plaintiffs and other voters similarly situated equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

b. That Senate Bill 54 in so far as it creates Senatorial Districts Fifth, Sixth and Seventh is unconstitutional and void.

c. That a prompt hearing be granted by one or more of the Three Judges to be designated, to the end that temporary relief can be granted so that the General Assembly will not be adjourned, but merely recessed pending the determina-

tion of this cause *or if, due to the fact that redistricting is sought only with respect to Norfolk and a portion of Virginia Beach,* this Court can by decree grant the necessary relief, that such relief be granted prior to the date of the June primaries.

4. That upon the final hearing of this action the Court grant to the plaintiffs the following relief:

a. Defendants and each of them be permanently restrained and enjoined from furnishing forms for nominations, from receiving nominations or petitions thereof, from conducting and certifying elections and from taking any and all other steps with respect to the election of members of the Senate of the Commonwealth of Virginia under and pursuant to the provisions of Senate Bill 54.

b. That defendants be directed to declare and hold the next primary and general elections for members of the Senate from the districts involved on an At Large basis as more particularly set out above.

c. That plaintiffs have such other, further and alternative relief as the nature of the cause may require and to this Court may seem proper.

PETITION FOR TEMPORARY RESTRAINING ORDER

Petition for Temporary Restraining Order to Prevent Irreparable Damage Pending Determination of Cause Pursuant to 28 United States Code Annotated, Section 2284(3).

To the Honorable John A. MacKenzie,
Judge of the Court aforesaid:

Now comes Henry E. Howell, Jr., on behalf of himself and the other plaintiffs herein and citizens similarly situated

and petitions this Honorable Court for a temporary restraining order restraining the defendants herein from holding a statewide primary or any other election for the purpose of electing the members of the Senate of Virginia, and further that all election requirements, processes and procedures be stayed pending the ruling by the Three (3) Judge Court which has been requested in the complaint filed herein, the said temporary restraining order being requested for the reason that petitioner and others similarly situated will suffer irreparable damage unless such relief be granted.

In support hereof petitioner respectfully shows as follows:

(1) The complaint filed herein and the affidavits attached thereto and the affidavits annexed to this petition establish a prima facie case of unconstitutionality and invidious discrimination with respect to the apportionment and redistricting of Senatorial representation in the City of Norfolk, Virginia.

(2) In particular, and without limitation, the affidavit of Professor T. J. Reed, establishes that approximately Fifty-Nine (59%) Per Cent of the citizens enumerated for the convenience of the United States Census Bureau as being stationed aboard vessels home ported at Norfolk were presumed by the said Census Bureau as living aboard said vessels, when, in fact, this Fifty-Nine (59%) Per Cent of citizens allocated to the Fifth Senatorial District reside outside the Fifth Senatorial District.

(3) At the present time primary elections will be held pursuant to the unconstitutional districting and apportionment of State Senators, which elections would be unconstitutionally held and be subject to being set aside upon final determination of this cause.

(4) That the estimated expense of holding primary elections in the City of Norfolk, Virginia, is $15,000.00; that if the primary elections for State Senate proceed as scheduled, candidates for that office will be required to incur expenditures incident to said elections amounting to thousands upon thousands of dollars and if the elections were set aside, these sums of money would be forever lost and the monies of the taxpayers expended for elections that might hereafter be held unconstitutional and null and void would be wasted and irrecoverable.

(5) That plaintiffs have acted promptly, having filed a complaint seeking a declaration of the unconstitutionality with respect to the aforesaid senatorial redistricting and apportionment act on Tuesday, March 2, 1971, within twenty-four hours of the signing of said bill by the Honorable A. Linwood Holton, Governor of Virginia.

(6) That the granting of said relief will not interfere with the orderly processes of government, for this Court will be able to hear and determine this cause in time for primary elections to be held and the nominees to be determined at a seasonable date prior to November 2, 1971.

(7) That if a temporary restraining order is not granted as herein prayed for the defendants will proceed to hold primary elections on June 8, 1971, and the aforementioned irreparable damage will have been incurred by petitioner and others similarly situated. It is, therefore, essential, appropriate, just and proper and in accordance with the intent and purpose of 28 United States Code Annotated, Section 2284(3) that, pending the final disposition of the matters involved herein, defendants be restrained from holding the aforesaid elections and that all elections requirements, processes and procedures be stayed.

Wherefore, petitioner prays:

(1) That this Court issue an order directing the defendants, acting by and through their counsel, to appear before this Court at a time and place fixed by this Court and show cause, if any there be, why a temporary restraining order should not issue restraining the defendants in the manner and to the extent prayed for herein pending the final decision of this matter.

(2) That upon return of said order to show cause, the Court issue an order restraining the defendants in the manner set forth above.

(3) That the Court grant such other and further relief as may be just and proper.

Dated at Norfolk, Virginia, this the 10th day of March, 1971.

App. 113

Navcomptnote 5740
12 Feb 1970

U.S. Department of Commerce
Bureau of the Census
Washington, D.C. 20233
Office of the Director

Reply to Attn. of:
S&PB FD

Subject:

Instructions for Enumeration of Personnel Assigned to U.S. Military and Coast Guard Vessels in the 1970 Census of Population

To:

All Ship Commanders

The Bureau of the Census, with the agreement of the Departments of Defense and Transportation, requests your cooperation in conducting the 1970 Census of Population by obtaining an enumeration of all personnel assigned to your vessel on 1 April 1970, including civilians. Failure of an individual to furnish the information called for on the questionnaire subjects him to the penalties provided under Title 13, United States Code, Section 221. Complete confidentiality of the information on the census questionnaire is also provided under Title 13, United States Code, Section 9.

The "1970 Report for Military and Maritime Personnel," Form D-21, which will be the questionnaire used in this enumeration, will be mailed directly to you from the Bureau of the Census. If you need additional supplies, complete the preaddressed Form D-324, "Request for Additional Materials," which will be included with the shipment

of questionnaires. Complete the enumeration as outlined below.

1. Distribute a D-21 to all persons assigned to the ship on 1 April 1970 including civilian personnel. Include all married personnel in the enumeration even though they may be home with their families on 1 April. Wives of personnel assigned to vessels will be instructed not to include their husbands when they complete their census forms.

2. All personnel who expect to be away from the ship during the Census period should complete their questionnaire prior to leaving. A D-21 must be completed from records for personnel who are away from the ship during the census and have not completed the D-21.

3. Complete Form D-323, "Enumeration Control Form," and return it to the Bureau of the Census, Jeffersonville, Indiana 47130 with the completed D-21's no later than 15 April 1970.

Your assistance in obtaining a complete and accurate census of the United States will be greatly appreciated.

/s/ George H. Brown
Director
Bureau of the Census

AMENDED COMPLAINT

Plaintiffs, for their amended complaint herein, state as follows:

I.

Plaintiffs hereby adopt their original complaint filed herein in its entirety, with the same force and effect as though repeated herein.

II.

Plaintiffs further allege that the dividing of the cities of Norfolk, Virginia, and Virginia Beach, Virginia, into single-member Senatorial Districts constitutes a change in a voting standard, practice and procedure for the plaintiffs herein and all other citizens similarly situated.

III.

The Commonwealth of Virginia has failed to comply with the provisions of 42 U.S. Code § 1973, and in particular, § 1973c, as amended, in that the Commonwealth has failed to bring a declaratory judgment suit in the District Court for the District of Columbia, and has failed to obtain approval of the office of the Attorney General of the United States of America, all of which is requisite before limiting the right of citizens in the cities of Norfolk, Virginia, and Virginia Beach, Virginia, to elect Senators At Large, since single-member Districts constitute a change not in force and effect on November 1, 1964.

Wherefore, in addition to the relief prayed for in their Complaint filed herein, plaintiffs formally apply for a temporary restraining order and, thereafter, a temporary injunction restraining candidate qualifications for single-member Senatorial Districts in the cities of Norfolk, Virginia Beach, Richmond, and any other political subdivision which did not have single-member Senatorial District elections prior to the passage of the reapportionment or redistricting act of 1971, and the plaintiffs further pray that they may have such other and further relief as in equity may be deemed just and right.

SECOND AMENDED COMPLAINT

Plaintiffs, for their second amended complaint herein, state as follows:

I.

The plaintiffs, by this second amended complaint, supplement the allegations contained in the original and amended complaint filed herein.

II.

Prior to the opinion of the Supreme Court of the United States in *Edgar D. Whitcomb, Governor of the State of Indiana* v. *Patrick Chavis, et al.*, handed down on June 7, 1971, the Department of Justice of the United States of America noted an exception to the deficiency of Senatorial Districts Fifth and Sixth on the grounds that the lines divided concentrations of Negro voters, appeared contorted and did not conform to natural boundaries. Pursuant to this exception, the Privileges and Elections Committee of the Senate of Virginia met and redrew the line separating proposed Senatorial Districts Fifth and Sixth so as to include more Negro citizens in Senatorial District Sixth, reducing the population in Senatorial District Fifth, but still failing to follow natural boundaries and creating irregular lines.

III.

On June 11, 1971, the General Assembly of Virginia passed Senate Bill 125, changing the lines as aforesaid and the territorial changes effected by said Act reduced the population in the Fifth District to 115,711 and increased the population of the Sixth District to 116,466.

IV.

The changing of the lines so as to include more Negro citizens in Senatorial District Sixth changed the residence of the plaintiff, Senator Peter K. Babalas, from Senatorial District Sixth to Senatorial District Fifth, making a nullity his previous filing and qualification as a candidate for the Democratic nomination from the Sixth District.

V.

The lines between Senatorial Districts Fifth and Sixth have been drawn to prefer by race and color contrary to the guarantees of the Fourteenth Amendment to the Constitution of the United States.

VI.

The effect of the changes in the irregular lines which divide Senatorial Districts Fifth and Sixth and, in particular, where the new line zigs to the west down the Norfolk and Western Railroad tracks off of Church Street, to where it proceeds in a southerly direction down Colonial Avenue to Olney and zags in an easterly direction to Duke Street, was to further unconstitutionally dilute the vote of the plaintiff, Reverend Lawrence L. Craig, a member of the Negro race residing on 27th Street in the Fifth Senatorial District, and other voters similarly situated.

VII.

The actions of the General Assembly of Virginia in approving the lines dividing Senatorial Districts Fifth and Sixth so as to prefer by race and color in the Sixth Senatorial District has unconstitutionally diluted the vote of a

recognizable minority in the Fifth and Seventh Senatorial Districts, where Negro citizens reside, whereas in At Large elections the collective influence of this racial minority may exert its maximum influence on the election of all Senators within the multi-member District.

VIII.

The contorted and manipulated lines dividing Senatorial Districts Fifth, Sixth and Seventh constitute unconstitutional gerrymandering.

Wherefore, plaintiffs pray for the relief sought and set out in their complaint and amended complaint herein, and in addition thereof pray that this Honorable Court provide the seasonable times for candidates to qualify for any Senatorial District apportioned or redistricted by decree of this Court or action taken by the General Assembly pursuant to a decree of this Court.

ANSWER

Now come the Attorney General of Virginia, Andrew P. Miller, as counsel for defendants Joan S. Mahan, Executive Secretary, State Board of Elections, Edgar A. Prichard, Member, State Board of Elections, U. P. Joyner, Jr., Member, State Board of Elections, A. Linwood Holton, Governor of Virginia; Joseph H. Campbell, Commonwealth's Attorney of Norfolk, counsel for members of the Electoral Board of the City of Norfolk; and Andre Evans, Commonwealth's Attorney for the City of Virginia Beach, as counsel for the members of the Electoral Board of the City of Virginia Beach, and in response to the Complaint filed herein, answer and say:

First Defense

The Governor of Virginia does not threaten the plaintiffs or any other person for the operation, enforcement or or execution of any law, nor has the Court jurisdiction to require the Chief Executive Officer of the Commonwealth to call any special session of the Virginia General Assembly. He is therefore neither a necessary nor proper party to this suit and should be dismissed.

Second Defense

Plaintiffs lack standing to maintain the instant suit.

Third Defense

The Complaint fails to state a claim upon which relief can be granted, nor do they state a cause of action on behalf of any of the plaintiffs.

Fourth Defense

In response to allegations in the Complaint, defendants:

(a) Deny the allegations of Paragraph 1.

(b) Admit the allegations of Paragraph 2.

(c) Admit the allegations of Paragraphs 3, 4, 5, 6, 7 and 8 but deny that plaintiffs have standing to maintain this instant suit.

(d) Admit the allegations of Paragraphs 9 (a) and 9 (b) [but deny as to Paragraph 9 (b) that the Governor is a necessary party]; admit the allegations of Paragraphs 9 (c) and 9 (b).

(e) Deny the allegations of Paragraph 10.

(f) As to the allegations of Paragraph 11, defendants aver that they are conclusions of law and need not be answered.

(g) Admit the allegations of Paragraph 12, except that Norfolk is entitled to 2.65 Senators.

(h) Admit, as to the allegations in Paragraph 13, that the City of Norfolk was divided into single member Senatorial Districts but deny that such allocation of representation was arbitrary and aver that it was properly based upon information from the United States Census Bureau.

(i) Deny the allegations of Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

(j) As to the allegations of Paragraphs 25, 26 and 27, defendants aver that the Senate reapportionment as passed by the 1971 General Assembly is constitutionally valid and that all constitutional rights of plaintiffs have been met by the present redistricting.

STIPULATION

It is stipulated by and between Andrew P. Miller, Attorney General of Virginia, on behalf of the defendant members of the State Board of Elections, Joseph Campbell, Commonwealth's Attorney for the City of Norfolk, on behalf of the defendant members of the Norfolk Electoral Board, Andre Evans, Commonwealth's Attorney of Virginia Beach, on behalf of the defendant members of the Virginia Beach Electoral Board, and Henry E. Howell, Jr., on behalf of himself and the other plaintiffs named herein, as follows:

1. That Senator Hunter B. Andrews on November 17, 1970, acting on behalf of the Senate Privileges and Elec-

tions Subcommittee designated to make recommendations to the full committee regarding the reapportionment of the Senate of Virginia, wrote to Senator Edward L. Breeden, Jr., with a copy to Senators Henry E. Howell, Jr., Peter K. Babalas and Edward T. Caton, III, requesting those four Senators to consider whether the four Senators preferred:

"(1) Four (4) Senators at large from the new proposed 2nd district;

(2) Two (2) Senators from a portion of the City of Norfolk, having a population of approximately 229,000, and one (1) Senator from the City of Virginia Beach in an area having 114,000 plus, with the overage remaining from Norfolk and the City of Virginia Beach being laid off in new boundaries as a separate senatorial district; or

(3) Separate senatorial districts laid off based upon Census Enumeration Tracts for each of the four (4) senators."

2. The following documents may be admitted into evidence without formal proof:

(a) The geographical description of Senatorial Districts Fifth, Sixth and Seventh as set out in Exhibit "A" attached to the complaint.

(b) The 1970 population count for Norfolk, Virginia by census tracts as set out on Exhibit "B" of said complaint.

(c) The 1970 population count for Virginia Beach, Virginia by census tracts as set out on Exhibit "C" of said complaint.

(d) The maps demarcating the geographical limits of Senatorial Districts Fifth, Sixth and Seventh, identified as Exhibit "D" and attached to the complaint herein.

(e) Affidavit of Bernard L. Michel and letter of Rear Admiral J. O. Cobb, dated February 12, 1971, both designated as Exhibit "E" and attached to the complaint herein.

(f) Population of respective Senatorial Districts designated as Exhibit "G" and attached to this complaint.

(g) Affidavit of Professor T. J. Reed, dated March 10, 1971, and the letter of J. O. Cobb dated March 2, 1971, attached thereto, notice of the Office of the Comptroller dated February 12, the census instruction sheet, form D-323, the instructions for enumeration of personnel assigned to U.S. Military and Coast Guard Vessels, all attached to the affidavit of Professor T. J. Reed, and made a part of the petition for temporary restraining order filed herein.

(h) Letter of March 5, 1971, of Conrad Taeuber, Associate Director, Bureau of the Census, together with his tabulation of home ported vessels berthed in the Tidewaters of Virginia and Census advance report PC(V2)-48.

(i) Census document numbered PC(V1)-48.

(j) Letter of Henry E. Howell, Jr., dated February 22, 1971, to Mrs. Leslie C. Curdts, General Registrar of the City of Norfolk, and her reply of February 23, 1971, including her records regarding the total number of registered voters by precincts as of January 1, 1971, and the last records available on registration by race in the precincts of the City of Norfolk.

3. All stipulations herein as to documents are for the purpose of simplifying procedures and obviating the neces-

sity of any party having to authenticate any such document. No stipulation herein made is to be taken as an admission that any such document or fact is relevant or material, or is to be accorded any particular effect or weight. Each party reserves the right to introduce such additional evidence, depositions, testimony or affidavits as the rules and this Court will permit.

4. It is stipulated that if called to testify, Mrs. Leslie C. Curdts, General Registrar of the City of Norfolk, Virginia, would testify that the cost of a primary election in the City of Norfolk is in excess of $15,000.00.

Dated this 31st day of March, 1971.

PLAINTIFFS' EXHIBIT 2

U.S. Department Of Commerce
Bureau of the Census
Washington, D. C. 20233

1970 Population Counts For Norfolk, Virginia
By Census Tracts

Tract	Population Counts	Tract	Population Counts
0009	13427	0020	1765
000999	36693	0021	2477
003999	113	0022	1283
004799	78	0023	2427
005099	37	0024	3464
0061	1881	0025	4436
0067	20	0026	2674
0001	2683	0027	5041
0002	6623	0028	4658
0003	3109	0029	8432
0004	3137	0030	2388
0005	3632	0031	3018
0006	4701	0032	2767
0007	3019	0033	2587
0008	3047	0034	2793
0009	10	003501	4476
0011	1633	003502	2818
0012	3578	0036	2385
0013	2852	0037	2518
0014	1756	0038	2657
0015	2358	0039	657
0016	2021	004001	2869
0017	2328	004002	3216
0018	1140	0041	2798
0019	778	0042	3281

Tract	Population Counts	Tract	Population Counts
0043	4072	0060	4034
0044	4250	0061	5310
0045	3418	0062	3404
0046	3466	0063	14
0047	2623	0064	3946
0048	1863	006501	2623
0049	1464	006502	2825
0050	3482	006601	2322
0051	1712	006602	3649
0052	5043	006603	3521
0053	2854	006604	2462
0055	3137	006605	3156
005601	4816	006606	5105
005602	3961	006607	3832
005701	4728	0067	602
005702	3604	0069	1806
0058	2793	006901	3192
005901	3211	006902	2132
005902	3851	007001	1466
005903	5433	007002	4230

PLAINTIFFS' EXHIBIT 3

U.S. Department Of Commerce
Bureau of the Census
Washington, D. C. 20233

1970 Population Counts For Virginia Beach, Virginia
By Census Tracts

Tract	Population Counts	Tract	Population Counts
0400	2087	0420	844
040099	5642	0422	5777
0418	851	0424	5854
0432	1585	0426	1682
0448	361	0428	10321
0450	4218	0430	4575
0452	1529	0432	22
0454	4383	0434	1744
0460	464	0436	1703
0462	1911	0438	3303
0464	2710	0440	9464
0466	801	0442	3409
0402	2649	0444	3137
0404	3877	0446	3619
0406	1247	0448	7624
0408	7793	0454	5960
0410	12488	0456	3654
0412	5841	0458	6757
0414	3020	0460	13681
0416	2042	0462	8573
0418	4904		

PLAINTIFFS' EXHIBIT 5

Affidavit Of Bernard L. Michel Dated February 13, 1971

Affidavit

State Of Virginia,
City of Norfolk, to-wit:

This day personally appeared before me, Catherine J. Crane, a Notary Public of and for the City aforesaid in the State of Virginia, whose commission expires on the 11th day of November, 1973, Bernard L. Michel, who after being by me first duly sworn, deposed and said as follows:

1. At the present time I am Management Assistance Officer for the Commandant of the Fifth Naval District.

2. I have had a total of 35 years experience as a Naval civil service employee and of those 35 years, 21 years has been with the Fifth Naval District at Norfolk.

3. Included in the scope of my responsibility is the necessity for being prepared to advise the Commandant with reference to management improvement, organization, personnel matters and being familiar with and employing statistics relating to matters of concern to the Commandant, including statistics relating to Naval personnel. I have to regularly deal with statistics relating to how many ships are home ported at Norfolk, how many aircraft squadrons are located in this area and how many occupy government quarters.

4. At the request of Senator Henry Howell, Rear Admiral J. O. Cobb, United States Navy, Commandant Fifth Naval District, prepared a letter relating to the living habits of men assigned to the Atlantic Fleet, which letter I delivered to Senator Howell. I am familiar with the letter and the content thereof.

5. Senator Howell has furnished me a Bill captioned "Committee Amendment In the Nature Of A Substitute For Senate Bill No. 54." I have looked at the Fifth District and the description thereof, along with the description of Senate Districts Six and Seven, and he has shown me an Esso map of the Norfolk-Portsmouth area and I have looked at it and ascertained that the map has outlined on it those districts. I have lived in Norfolk approximately 21 years and I am thoroughly familiar with Norfolk and the areas involved.

6. As is noted in Admiral Cobb's letter to Senator Howell dated 12 February 1971, the rule of thumb that is used by the Commander in Chief, Atlantic Fleet Headquarters, is that Fifty (50%) per cent of the men that are aboard ships home ported in Norfolk occupy housing units ashore. These men, many of whom are married, live in housing units scattered throughout the Greater Norfolk Area.

7. Once we exclude the housing units located on government property within the area described as the Fifth Senatorial District, which includes Benmorrel, such housing as bachelor officers' and enlisted mens' quarters and the Armed Forces Staff College, we would find that only a small percentage of the approximately Fifty (50%) per cent of the men assigned to ships home ported in Norfolk and who live ashore living in the remainder of the area containing private and civilian housing within the Fifth Senatorial District.

8. Senator Howell has shown me a census figure that he states was obtained from state officials, which shows 36,693 men assigned to ships home ported in Norfolk, and I have no reason to dispute that figure.

9. I have had an opportunity to examine the census tract designated as No. 9 within the City of Norfolk, and included in census tract 9 is the government owned prop-

erty designated as the United States Naval Station, the United States Naval Air Station, the Supreme Allied Command Atlantic Headquarters, the Armed Forces Staff College and Benmorrel, which is enlisted men's family housing units, among other Naval facilities.

And further this deponent saith not.

/s/ Bernard L. Michel
Bernard L. Michel

Given Under My Hand this 13th day of February, 1971.

/s/ Catherine J. Crane
Notary Public

PLAINTIFFS' EXHIBIT 6

Commandant Fifth Naval District
Commander, Naval Base
Norfolk, Virginia 23511

12 February 1971

Honorable Henry E. Howell, Jr.
Virginia Senate
State Capitol
Richmond, Virginia 23219

Dear Mr. Howell:

In response to your telephone request of this headquarters, the following information is furnished: The only figures available as to how many navy personnel attached to ships homeported at the Norfolk Naval Station live ashore is the "rule of thumb" used by the Commander in Chief, Atlantic Fleet Headquarters, which indicates that 50% of the men assigned to Atlantic Fleet afloat units occupy housing ashore near the home port of the ship.

In addition, there are approximately 7600 men living in bachelor quarters on Navy property and an additional 2400 Navy men living in government housing family units in the Norfolk area. However; figures as to the number of dependents residing with these 2400 Navy men are not readily available.

If I may be of any further assistance please to not hesitate to call on me.

Sincerely yours,

/s/ J. O. Cobb
J. O. Cobb
Rear Admiral, U.S. Navy
Commandant Fifth Naval District

PLAINTIFFS' EXHIBIT 7

COMFIVE/COMNAVBASE NORVA Instruction 5726.4A dated June 3, 1970

Commandant, Fifth Naval District
Commander, Naval Base
Norfolk, Virginia 23511

COMFIVE/COMNAVBASE
NORVA INST 5726.4A
Code 07
3 June 1970

COMFIVE/COMNAVBASE NORVA Instruction 5726.4A

From: Commandant, Fifth Naval District/Commander Naval Base, Norfolk

To: Distribution List

Subj: Admission of persons to a naval shore installation for the purpose of soliciting political support

Ref: (a) DOD Directive Number 5410.18 of 9 Feb. 1968, Subj: "Community Relations"

(b) 18 U.S. Code, sec. 1382

1. *Purpose.* To prescribe uniform rules governing the admission of political candidates or their supporters to naval shore installations within the Fifth Naval District.

2. *Cancellation.* COMFIVEINST 5726.4 is hereby cancelled and superseded.

3. *Background.* Paragraph IV.C. of reference (a) contains the following policy guidance:

"Department of Defense participation and cooperation must not directly or indirectly (a) endorse or selectively benefit or favor, or appear to endorse or selectively benefit or favor, any private individual, sect, fraternal organization, commercial venture, or political group, or (b) be associated with solicitation of votes in a political election."

In view of this policy, it is desirable that requests for permission to enter naval shore installations for the purpose of soliciting political support be treated uniformly throughout the Fifth Naval District.

4. *Action.* Commanding officers and officers-in-charge of naval shore installations within the Fifth Naval District will ensure that the policy guidelines contained in paragraph IV.C. of reference (a) are implemented.

a. Persons seeking admission to a naval shore installation for the purpose of soliciting political support should be denied permission to enter.

b. Denial of permission should be accompanied by a reasonable explanation of the policy proclaimed in reference (a).

c. Attention is directed to the provisions of reference (b) in the case of persons who, having once been instructed not to enter a shore facility, disobey that instruction and enter the installation for the purpose of soliciting political support.

5. *Applicability.* This Instruction shall apply upon receipt to all Navy and Marine Corps shore installations within the Fifth Naval District.

/s/ J. C. Dempsey
J. C. Dempsey

Distribution (8/28/68)
List I
List II (only 16, 17, 19, 20, 21, 22)
List III
List IV (less 31-36)
List IX
List IX (only N124) (50 copies)
(525 copies)
Stocked by: COMFIVE Code N13

PLAINTIFFS' EXHIBIT 9

Affidavit of Professor T. J. Reed

State of Virginia,
City of Norfolk, to-wit:

This day personally appeared before me, Catherine J. Crane, a Notary Public of and for the City aforesaid in the State of Virginia, whose commission expires on the 11th day of November, 1973, Professor T. J. Reed, who after being by me first duly sworn, deposed and said as follows:

1. I am currently Associate Professor in the School of Business Administration of Old Dominion University, Norfolk, Virginia. I obtained a Bachelor of Science degree at the University of Arkansas in 1939 and a Master of Science degree in Economics and Statistics from Iowa State University in 1947. I have thirty years of professional experience in census and sample surveys. In 1940 I was employed by the United States Census Bureau in the Department of Commerce working in the 1940 census. From 1944 until 1948 while at the Iowa State University I was on a sampling project in which the Bureau of Census, the Department of Agriculture and the University were cooperating. I was engaged on three assignments relating to planning for, the taking of and a post enumeration survey to determine the reliability of the initial enumeration of the 1950 census. I made statistical analyses and testified regarding the malapportionment of Virginia's Congressional Districts in the suit of Wilkins v. Davis filed in the Surpeme Court of Virginia in 1964. I have engaged in statistical studies and surveys relating to the use of census data for business and governmental agencies. For the last three years by appointment of the Secretary of Commerce I have served as Executive Reservist in the Census Unit of the National

Defense Executive Reserve. In summary, I have received training and have worked with the application of statistics and census data off and on for approximately thirty years.

2. In the latter part of February, 1971, I attended certain hearings of the Senate Privileges and Elections Committee and the session of the Senate of Virginia on the day the plan for redistricting and apportioning the Senate of Virginia was debated. As a result of these sessions I became familiar with the lines of demarcation for Senatorial Districts Fifth, Sixth and Seventh, among others.

3. I have obtained and worked with the census enumeration by tracts for the cities of Norfolk, Virginia Beach, Chesapeake and Portsmouth, Virginia.

4. I have made a detailed study of the location of the residences of the 36,693 naval personnel stationed aboard ships home ported at Norfolk enumerated in census tract 9.99, sometimes referred to as tract 000999.

5. I acquainted Henry Howell with the fact that in April of 1970 the month the 1970 census was taken there was taken a survey through the Command of the Fifth Naval District of where naval personnel stationed in Norfolk, whether aboard ships or otherwise, actually lived, and requested that for the purpose of my study Mr. Howell obtain this information from the Commandant of the Fifth Naval District with respect to where naval personnel live while attached to ships home ported at the Naval Station, Norfolk. There is attached to this affidavit a copy of a letter dated 2 March 1971, addressed to Senator Howell by Rear Admiral J. O. Cobb, Commandant, Fifth Naval District, which provided the needed data. I approve from a statistical standpoint the adequacy of the sampling size

used by the Secretary of Defense for the survey referred to, namely, 543 individuals.

6. I have studied and analyzed the statistics furnished in Admiral Cobb's letter referred to and have reached the following conclusions:

Of the total of 36,693 enumerated and allocated to the population constituting the Fifth Senatorial District of 116,084 Fifty Nine (59%) Per Cent or approximately 21,600 of said personnel maintain local residences outside the Fifth Senatorial District. This reduces the number of persons residing in the Fifth Senatorial District to 94,484.

7. Individuals are assigned to census tracts by the United States Bureau of Census on the assumption that the individual lives within the tract to which he is assigned. In the case of Navy personnel assigned to vessels, the Bureau of Census has assumed for its purposes that said personnel not only work, but live on the vessels. It has been established that for the purpose of legislative apportionment this is an erroneous assumption, for approximately 21,600 individuals should not have been included in census tract 9.99 for the reasons above, namely, they do not live in the census tract and, in fact, lived outside of the geographical limits of Senatorial District Five. Notwithstanding this fact, the legislative act which redistricted and apportioned Senators in Norfolk, assigned the entire enumeration of 36,693 persons to Senatorial District Five.

8. I have concluded that approximately 8,450 naval personnel stationed aboard vessels home ported at the Norfolk Naval Base actually live aboard the vessels. In addition, there has been enumerated 13,427 naval personnel, including dependents, in what is designated as census tract 9.

These individuals live in military housing located on government property. In my opinion the only way to diffuse the impact of the approximately 50,120 people that have been allocated by the state legislature for reapportionment purposes to the Fifth Senatorial District, which includes 21,600 persons who do not live within the district, and others who cannot be reached in normal campaign procedures and processes would have to be represented by Senators elected on an At Large basis, which has been the historic method in the City of Norfolk.

And further this deponent saith not.

/s/ T. J. Reed

Given under my hand this 10th day of March, 1971.

/s/ Catherine J. Crane
Notary Public

PLAINTIFFS' EXHIBIT 10

Letter of J. O. Cobb, Rear Admiral, U.S. Navy, Commandant, Fifth Naval District addressed to Honorable Henry E. Howell, Jr., dated 2 March 1971, with attachments:

(a) NAVCOMPT NOTICE 5740, Comptroller of the Navy dated 12 Feb. 1970. Instructions.

(b) U.S. Department of Commerce form D-323– Enumeration Control U.S. Military and Coast Guard Crews of Vessels.

(c) U.S. Department of Commerce form "Request" for Additional Census Materials:

Commandant Fifth Naval District
Commander, Naval Base
Norfolk, Virginia 23511

Honorable Henry E. Howell, Jr.
Virginia Senate
808 Maritime Tower
Norfolk, Va. 23510

Dear Mr. Howell:

Reference is made to your letter of 22 February 1971 in which you requested certain statistics and information concerning the 1970 Census which was taken aboard ships homeported in Norfolk. In this regard the following information is furnished:

a. The census taking aboard ships was handled between the Census Bureau and the commanding officers of ships. Department of the Navy, Office of the Comptroller Notice 5740 of 12 February 1970, a copy of which is attached, furnishes information in this regard.

b. As suggested in your letter, it has been found that the Navy Housing Survey conducted in 1970 provides the most reliable information available concerning the areas where Navy personnel live while attached to ships homeported at Naval Station, Norfolk. These housing surveys are conducted for the purpose of obtaining current and valid information on family housing requirements at Navy shore activities. The sampling method survey (SAMS) technique used in the study was field tested in other locations in the previous year and has now been approved by the Office of the Secretary of Defense for expanded use in forthcoming surveys. It is indicated that the SAMS system offers the advantage of reduced manpower and compressed timeframe, while providing results which are as good as, or slightly better than the system previously used wherein all personnel having a requirement for housing were required to be included in the survey.

c. The SAMS method was conducted as follows: a listing of a representative group of personnel, officers and enlisted, attached to various types of ships in a particular area was furnished the ships for completion by the individuals concerned. A compilation of the results of the sampling survey of ships homeported at Naval Station, Norfolk in April 1970 indicates the following numbers of personnel entitled to Basic Allowance for Quarters living on board ships or in the various Zip Code areas:

On board ships = 125

Zip Codes	Zip Codes	Zip Codes	Zip Codes
23501 = 2	23513 = 32	23455 = 21	23321 = 1
23502 = 18	23517 = 5	23462 = 18	23322 = 1
23503 = 74	23518 = 57	23701 = 6	23323 = 3
23504 = 3	23525 = 1	23702 = 12	23325 = 5
23505 = 47	23400 = 1	23703 = 3	23366 = 1
23507 = 3	23402 = 1	23704 = 3	23369 = 1
23508 = 14	23451 = 4	23707 = 4	23601 = 3
23509 = 18	23452 = 30	23709 = 1	23602 = 2
23510 = 1	23453 = 1	23710 = 1	23605 = 2
23511 = 3	23454 = 5	23320 = 9	23606 = 1
			23607 = 1

Total sample size: 544

Unfortunately, I am unable to assist you in your request to interview a representative group of men assigned to ships who, in April of 1970, resided in Senatorial Districts Six and Seven.

The Bureau of Naval Personnel advises that the serviceman's off-duty hours in civilian domain are considered private affairs and as such, the policy of the Bureau is not to release personal information such as home addresses unless specifically authorized by the serviceman himself. To do otherwise could be considered an invasion of their privacy. Should you desire to pursue this matter at a higher level, I suggest you contact the following individual:

Assistant Vice Chief of Naval Operations and
Director of Naval Administration
Navy Department
Washington, D. C. 20360

I regret that my answer to this portion of your letter is not more favorable.

Sincerely yours,

/s/ J. O. Cobb
Rear Admiral, U.S. Navy
Commandant Fifth Naval District

Encl:
(1) NAVCOMPT NOTE 5740
of 12 Feb 1970

Department of the Navy
Office of the Comptroller
Washington, D.C. 20350

In Reply Refer to
NAVCOMPTNOTE 5740
NCB-222
NCB 93-70
12 Feb 1970

NAVCOMPT NOTICE 5740

From: Comptroller of the Navy

To: Distribution List

Subj: 1970 Census Enumeration of Personnel Assigned to U.S. Naval Ships

Encl: (1) Instructions for Enumeration of Personnel Assigned to U.S. Military and Coast Guard Vessels in the 1970 Census of Population

1. *Purpose.* To transmit enclosure (1) for action.

2. *Scope.* This Notice applies to all Active Fleet ships of

the Navy and to all ships of the nucleus fleet of the Military Sea Transportation Service.

3. *Background.* The Decennial Census is required by Article I, Section 2 of the Constitution of the United States. The Secretary of Defense has pledged full cooperation with the Bureau of the Census and agreed that the military services would conduct their own enumeration. NAVCOMPT. NOTE 5740 (NCB 87-70) of 29 January 1970 was issued to alert all ships and stations that the 1970 Census would be taken 1 April 1970. The Bureau of the Census will make direct shipment of questionnaires in February.

4. *Action.* Each action addressee will be responsible for the following:

a. The commanding officer of each ship will designate a project officer who will be responsible for the enumeration.

b. If no forms have been received by 1 March 1970, they should be requested from the Bureau of the Census, 1201 East 10th Street, Jeffersonville, Ind. 47130.

c. The conduct of the Census enumeration should be confined to the objectives of enclosure (1).

d. Additional instructions on how to fill out the forms should not be given without prior approval of the Bureau of the Census.

e. Any ships that may have participated in the procedural test at the Key West Naval Base must also comply with these instructions.

f. All persons arriving on the ship for 30 days following the census should be queried whether they have been enumerated.

g. Dependents of all personnel assigned to ships will be excluded from this enumeration. These dependents will be enumerated where they are residing.

COPY BOUN

h. At the conclusion of the enumeration all forms should be packaged and returned to the Bureau of the Census by air mail (see par. 4b).

5. *Point of contact.* If the ships project officer is unable to get his supply of forms from the Bureau of the Census he may call his point of contact in Washington, D. C. as follows:

Command	*Project Officer*	*Commercial Telephone*
CINCLANTFLT, CINCPACFLT and CINCUSNAVEUR	CDR Frank Pavlisin	OX-61035
Military Sea Transportation Service	Lt. William A. Callis	OX-69231

Area code for commercial calls to all "OX" numbers is 202. The above persons can be reached on AUTOVON by substitution of "22" for "OX."

6. *Cancellation.* 30 June 1970.

/s/ W. D. Gaddis
Director of Budget and Reports

Distribution: (2 copies each)
SNDL Part 1: 29, 30, 31, 32, 33, 35 and 36
Annex A

Copy to:
SNDL Part 1: 21, and 41A
Part 2: A3 (OP09B28, 2 cys)
Ref: OPNAVINST 5215.9A
E2D (GLakes only) Code 1B

CLOSE IN CENTER

INSTRUCTIONS – Complete this form and return with completed questionnaires no later than April 15, 1970.

1. Name of vessel	
2. Number of personnel assigned	3. Number of questionnaires completed
4. Name of person completing this report	5. Rank

Form D-323 (6-22-69)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

ENUMERATION CONTROL
U.S. MILITARY AND COAST GUARD CREWS OF VESSELS
19th Decennial Census – 1970

REQUEST FOR ADDITIONAL CENSUS MATERIALS

Form	Quantity	
D-6		Military Household Mailing Pieces – includes questionnaire, instructions, and return envelope
D-7 △		
D-8 ●		
D-1		- Questionnaire for transcribing group quarters personnel
D-21		- Military Individual Census Report
D-167		- Address Register

Name of installation or vessel

Mailing address *(Include ZIP code)*

Name of person requesting forms

USCOMM-DC

PLAINTIFFS' EXHIBIT 11

Letter of Conrad Taeuber, Associate Director, Bureau of the Census addressed to Honorable Henry E. Howell, Jr., dated March 5, 1971:

U.S. Department of Commerce
Bureau of the Census
Washington, D.C. 20233
Office of the Director

March 5, 1971

Honorable Henry E. Howell, Jr.
Virginia State Senate
808 Maritime Tower
Norfolk, Virginia 23510

Dear Mr. Howell:

In response to your telephone request to Dr. Sheldon of our Population Division, I am enclosing a list of Naval vessels and their components home ported in the Norfolk area. This list was initially furnished to Mr. Shropshire, Clerk of the House and Senate Privileges and Elections Committee.

I am also enclosing a copy of the PC(V2)-48 which presents statistics on Negroes for Virginia cities.

Sincerely,

/s/ Conrad Taeuber
Associate Director
Bureau of the Census
Enclosures

PLAINTIFFS' EXHIBIT 12

List of Ships Home Ported at Norfolk
(attachment to letter of Conrad Taeuber (11))
1970 Decennial Census

Ships Berthed in Tidewaters of Virginia

Naval Vessel	Location	Pop. Count
Shenandoah	Norfolk	315
Sierra	Norfolk	697
Tidewater	Norfolk	618
Butte	Norfolk	303
Diamond Head	Norfolk	210
Arcturus	Norfolk	204
Dene Bola	Norfolk	216
Zelima	Norfolk	203
Concord	Norfolk	251
Sylvania	Norfolk	362
Aucilla	Norfolk	237
Canisteo	Norfolk	354
Chuckawan	Norfolk	245
Truckee	Norfolk	289
Seattle	Norfolk	615
Amphion	Norfolk	705
Vulcan	Norfolk	439
L.Y. Spear	Norfolk	936
Orion	Norfolk	678
Kittiwake	Norfolk	90
Sagamore	Norfolk	21
Newport News	Norfolk	939
Northampton	Norfolk	200
Wright	Norfolk	770
Columbus	Norfolk	1,122
Springfield	Norfolk	1,090

Naval Vessel	Location	Pop. Count
America	Norfolk	1,207
Independence	Norfolk	2,068
John F. Kennedy	Norfolk	2,565
Enterprise	Norfolk	3,098
Yorktown	Norfolk	1,013
Damato	Norfolk	228
Dupont	Norfolk	93
Fred T. Berry	Norfolk	256
Furse	Norfolk	243
Harold J. Ellison	Norfolk	154
Hawkins	Norfolk	272
Henley	Norfolk	100
Laffey	Norfolk	296
Leary	Norfolk	266
Mullinnix	Norfolk	292
New	Norfolk	272
Rich	Norfolk	285
Robert A. Owens	Norfolk	273
Steinaker	Norfolk	262
Stickell	Norfolk	243
Stormes	Norfolk	241
Vogel Gesang	Norfolk	146
Willard Keith	Norfolk	152
Barney	Norfolk	177
Claude U. Ricketts	Norfolk	339
Conyngham	Norfolk	331
Mitscher	Norfolk	355
Richard F. Byrd	Norfolk	283
Connole	Norfolk	224
Dahlgren	Norfolk	389
Docono	Norfolk	481
Arned	Norfolk	237
Capricornus	Norfolk	45

Naval Vessel	Location	Pop. Count
Charleton	Norfolk	330
El Paso	Norfolk	268
Muliphen	Norfolk	249
Rankin	Norfolk	239
Vermillion	Norfolk	331
Yancey	Norfolk	274
Cambria	Norfolk	334
Chilton	Norfolk	389
Francis Marion	Norfolk	413
Austin	Norfolk	414
Coronado	Norfolk	125
La Salle	Norfolk	404
Nashville	Norfolk	414
Raleigh	Norfolk	298
Guadalcanal	Norfolk	546
Guam	Norfolk	606
Inchon	Norfolk	352
Grampus	Norfolk	77
Sea Leopard	Norfolk	82
Sirago	Norfolk	54
Finback	Norfolk	105
Flying Fish	Norfolk	133
Hammerhead	Norfolk	109
Lapon	Norfolk	86
Ray	Norfolk	111
Sea Devil	Norfolk	93
Shark	Norfolk	108
Skipjack	Norfolk	98
Spadefish	Norfolk	68
Nespelen	NAB Little Creek-Va. Beach	70
Noxubee	NAB Little Creek-Va. Beach	102
Hoist	NAB Little Creek-Va. Beach	69
Opportune	NAB Little Creek-Va. Beach	72

Naval Vessel	Location	Pop. Count
Preserver	NAB Little Creek-Va. Beach	85
Recovery	NAB Little Creek-Va. Beach	81
Accokkeek	NAB Little Creek-Va. Beach	39
Atakapa	NAB Little Creek-Va. Beach	69
Kiowa	NAB Little Creek-Va. Beach	68
Mosopelea	NAB Little Creek-Va. Beach	63
Papago	NAB Little Creek-Va. Beach	74
Seneca	NAB Little Creek-Va. Beach	76
Shakori	NAB Little Creek-Va. Beach	65
Utina	NAB Little Creek-Va. Beach	68
Donner	NAB Little Creek-Va. Beach	263
Fort Mandan	NAB Little Creek-Va. Beach	233
Fort Snelling	NAB Little Creek-Va. Beach	250
Hermitage	NAB Little Creek-Va. Beach	289
Plymouth Rock	NAB Little Creek-Va. Beach	282
Rushmore	NAB Little Creek-Va. Beach	198
San Marcos	NAB Little Creek-Va. Beach	319
Spiegel Grove	NAB Little Creek-Va. Beach	446
De Soto County	NAB Little Creek-Va. Beach	132
Graham County	NAB Little Creek-Va. Beach	165
Grant County	NAB Little Creek-Va. Beach	135
Lorain County	NAB Little Creek-Va. Beach	190
Newport	NAB Little Creek-Va. Beach	193
Suffolk County	NAB Little Creek-Va. Beach	160
Terrebonne Parish	NAB Little Creek-Va. Beach	158
Traverse County	NAB Little Creek-Va. Beach	160
Wahkiakum County	NAB Little Creek-Va. Beach	407
Waldo County	NAB Little Creek-Va. Beach	144
Walworth County	NAB Little Creek-Va. Beach	135
Wood County	NAB Little Creek-Va. Beach	169
York County	NAB Little Creek-Va. Beach	120
Nathaniel Greene	Newport News	206
	Total	41,860

Coast Guard Vessel	Location	Pop. Count
Cuyahoga	Yorktown	40
Tanager	Yorktown	57
Capstan	Alexandria	5
Absecon	Norfolk	143
Chincoteague	Norfolk	70
Ingham	Norfolk	137
Point Brown	Norfolk	10
Chock	Norfolk	4
Point Arena	NAB Little Creek-Va. Beach	8
Point Huron	NAB Little Creek-Va. Beach	8
Conifer	Portsmouth	47
Madrona	Portsmouth	45
Barberry	Portsmouth	8
Narcissus	Portsmouth	18
Sledge	Portsmouth	10
Courier	Yorktown	96
	Total	706

Maritime Vessel	Location	Pop. Count
USNS Kane	Norfolk	21
USNS Bondia	Norfolk	39
SS Louisiana Getty	Newport News	26
SS Esso Gettysburg	Newport News	31
SS Austral Pilot	Norfolk	40
SS Atlantic Communicator	Norfolk	33
SS Esso Chester	Norfolk	32
SS Prudential Seajet	Norfolk	40
SS Exbrook	Norfolk	49
SS Fra Berlanga	Norfolk	3
SS Flying Clipper	Norfolk	3
USNS Shawnee Trail	Yorktown	40
	Total	357

PLAINTIFFS' EXHIBIT 13

1970 Census of Population, Advance Report, PC(V2)-48,
(attachment to letter of Conrad Taeuber (11):

1970 Census of Population
U.S. Department of Commerce/Bureau of the Census
Advance Report
PC(V2)-48
Virginia

General Population Characteristics

(This series consists of 52 reports—number 1 for the United States and numbers 2 through 52 for the States and the District of Columbia in alphabetical order rather than order of publication.)

This report presents 1970 census statistics on the basic demographic characteristics of the inhabitants of the State. Data on age, sex, race, and relationship to head of household are shown for the State, each standard metropolitan statistical area, each place of 10,000 inhabitants or more, and each county or comparable area.

The data presented here are being issued in advance of their publication in Final Report Series PC(1)-B, which will provide additional information on the population characteristics of the inhabitants of the State. The final report for this State will be published in about 2 months.

Statistics on selected housing characteristics for the areas shown in this report are currently being issued in Advance Report Series HC(V1). An outline of the publication program for the 1970 Census of Population and Housing can be obtained free of charge from the Bureau of the Census, Washington, D.C. 20233, or any U.S. Department of Commerce Field Office.

The State SMSA's Places of 10,000 or More Counties

	The State	Norfolk-Portsmouth	Norfolk City
Race			
All races	4,648,494	680,600	307,951
White	3,757,478	504,444	215,055
Negro	865,388	167,970	87,275
Other	25,628	8,186	5,621
Age			
Total male, all ages	2,296,498	353,791	166,453
Under 5 years	199,669	29,993	13,018
5 and 6 years	91,334	13,781	5,637
7 to 9 years	141,169	21,247	8,172
10 to 13 years	193,769	28,383	10,587
14 years	47,451	6,726	2,571
15 years	46,257	6,350	2,393
16 and 17 years	88,909	12,195	4,949
18 and 19 years	89,852	16,914	9,280
20 years	50,221	14,830	9,749
21 years	49,113	15,433	10,470
22 to 24 years	132,361	30,442	19,349
25 to 34 years	307,028	47,414	22,372
35 to 44 years	269,861	38,025	15,474
45 to 54 years	258,249	34,596	14,469
55 to 59 years	101,762	12,066	5,518
60 to 61 years	35,382	4,157	1,982
62 to 64 years	45,111	5,087	2,385
65 to 74 years	99,771	11,180	5,563
75 years and over	49,229	4,972	2,515
Total female, all ages	2,351,996	326,809	141,498
Under 5 years	193,336	29,404	12,858

	The State	Norfolk-Portsmouth	Norfolk City
5 and 6 years	88,133	13,158	5,338
7 and 9 years	136,439	20,773	8,074
10 to 13 years	187,079	27,729	10,694
14 years	46,053	6,533	2,507
15 years	45,015	6,366	2,454
16 and 17 years	85,850	12,043	4,802
18 and 19 years	85,042	11,562	5,716
20 years	43,308	6,559	3,582
21 years	42,497	6,687	3,568
22 to 24 years	122,534	18,734	9,197
25 to 34 years	308,653	43,566	17,466
35 to 44 years	279,401	38,667	14,883
45 to 54 years	271,342	36,222	15,889
55 to 59 years	108,775	13,236	6,313
60 and 61 years	39,333	4,536	2,271
62 to 64 years	52,496	6,230	3,098
65 to 74 years	133,210	15,753	8,114
75 years and over	83,502	9,051	4,674
Negro male, all ages	420,847	81,158	42,340
Under 5 years	42,479	8,091	4,308
5 to 14 years	104,369	20,796	10,264
15 to 24 years	82,724	16,891	9,406
25 to 34 years	45,418	8,064	4,336
35 to 44 years	42,174	7,992	3,978
45 to 54 years	43,193	8,970	4,454
55 to 64 years	32,159	5,790	3,038
65 years and over	28,331	4,564	2,556
Negro female, all ages	444,541	86,812	44,935
Under 5 years	42,820	8,185	4,378
5 to 14 years	104,359	21,056	10,471
15 to 24 years	82,730	15,811	8,181
25 to 34 years	49,572	9,509	4,917

	The State	Norfolk-Portsmouth	Norfolk City
35 to 44 years	48,418	9,721	4,904
45 to 54 years	45,924	9,736	4,971
55 to 64 years	34,207	6,608	3,637
65 years and over	36,511	6,186	3,476
Relationship to Head of Household			
Total population	4,648,494	680,600	307,951
In households	4,452,408	620,781	263,285
Head	1,390,227	191,547	86,746
Primary individual	232,043	31,371	17,807
Family head, Male	1,027,688	136,901	56,496
Female	130,496	23,275	12,443
Wife of head	996,282	132,865	54,465
Other relative of head	1,986,342	285,093	116,178
Not related to head	79,557	11,276	5,896
In group quarters	196,086	59,819	44,666
Inmate of institution	45,943	2,457	1,102
Other	150,143	57,362	43,564
Negro population	865,388	167,970	87,275
In households	830,837	161,695	82,901
Head	220,067	44,535	23,907
Primary individual	39,299	8,698	5,293
Family head, Male	137,875	26,060	12,784
Female	42,893	9,777	5,830
Wife of head	128,464	24,303	11,768
Other relative of head	459,448	86,277	44,467
Not related to head	22,858	4,580	2,759
In group quarters	34,551	6,275	4,374
Inmate of institution	15,294	996	505
Other	19,257	5,279	3,869

PLAINTIFFS' EXHIBIT 15

Letter of Henry Howwell to Mrs. Leslie Curdts, Registrar, City of Norfolk, dated February 22, 1971:

Commonwealth of Virginia
Senate
February 22, 1971
Dictated February 21, 1971

Mrs. Leslie Curdts
Registrar
City of Norfolk
City Hall
Norfolk, Virginia 23510

Dear Mrs. Curdts:

I would like the most up to date information we have regarding the total number of qualified voters in each of the voting precincts in the City of Norfolk.

I would also like the latest available breakdown by precincts and in the aggregate of White and non-White voters. I realize that this type of information may have been stopped some years ago, but I would like the latest available information.

If you will call my office as soon as this information is available, my Secretary, Mrs. Crane, will arrange for it to be picked up.

Sincerely,

/s/ Henry Howell

PLAINTIFFS' EXHIBIT 16

Letter of Leslie C. Curdts, General Registrar, City o
Norfolk, Virginia, addressed to Honorable Henry E
Howell, Jr., dated February 23, 1971:

General Registrar
City of Norfolk
Virginia
February 23, 1971

Honorable Henry E. Howell, Jr.
808 Maritime Tower
Norfolk, Virginia 23510

Dear Sir:

I am enclosing the information requested in your lett
of February 22, 1971.

Yours very truly,

/s/ Leslie C. Curdts
General Registrar

PLAINTIFFS' EXHIBIT 17

Total number of Registered Voters by Precincts as of January 1, 1971, and last records available on registration by race in said precincts for the City of Norfolk, (attachment to letter of Leslie C. Curdts (16)):

Registered Voters as of January 1, 1971

Precinct No. 1	2024	Precinct No. 28	1937
Precinct No. 2	2128	Precinct No. 29	1234
Precinct No. 3	872	Precinct No. 30	1769
Precinct No. 4	3127	Precinct No. 31	1477
Precinct No. 5	1648	Precinct No. 32	1479
Precinct No. 6	1124	Precinct No. 33	1300
Precinct No. 7	1526	Precinct No. 34	1065
Precinct No. 8	3366	Precinct No. 35	1341
Precinct No. 9	942	Precinct No. 36	766
Precinct No. 10	2287	Precinct No. 37	1542
Precinct No. 11	1256	Precinct No. 38	1277
Precinct No. 12	1769	Precinct No. 39	2652
Precinct No. 13	1812	Precinct No. 40	1902
Precinct No. 14	1752	Precinct No. 42	2039
Precinct No. 15	1815	Precinct No. 43	1063
Precinct No. 16	1299	Precinct No. 44	1905
Precinct No. 17	1505	Precinct No. 45	1299
Precinct No. 18	887	Precinct No. 47	1799
Precinct No. 19	1729	Precinct No. 48	3610
Precinct No. 20	1903	Precinct No. 49	1334
Precinct No. 21	2814	Precinct No. 50	3097
Precinct No. 22	2491	Precinct No. 51	1115
Precinct No. 23	2293	Precinct No. 52	2637
Precinct No. 24	2033	Precinct No. 53	1424
Precinct No. 25	1538	Precinct No. 54	740
Precinct No. 26	741	Precinct No. 55	2137
Precinct No. 27	1824	Total	92,445

NOVEMBER 16, 1964

Precinct	White			Colored			Pct. Total
	State	Federal	Total	State	Federal	Total	
1st	334	24	358	650	476	1126	1484
2nd	105	3	108	865	453	1318	1426
3rd	313	38	351	144	138	282	633
4th	3	0	3	1648	789	2437	2440
5th	70	0	70	1071	410	1481	1551
6th	0	0	0	598	273	871	871
7th	75	0	75	906	295	1201	1276
8th	15	0	15	1658	819	2477	2492
9th	177	4	181	311	255	570	747
10th	1318	166	1484	73	99	172	1656
11th	1195	69	1264	1	0	1	1265
12th	1461	89	1550	0	0	0	1550
13th	1508	130	1638	47	85	132	1770
14th	996	92	1088	66	158	224	1312
15th	1604	132	1736	0	0	0	1736
16th	1134	102	1236	1	2	3	1239
17th	284	19	303	520	318	838	1141
18th	707	48	755	17	5	22	777
19th	1476	55	1531	1	0	1	1532
20th	1436	88	1524	1	0	1	1525
21st	2231	108	2339	81	32	113	2452
22nd	1091	105	1196	239	105	344	1540
23rd	1995	148	2143	2	0	2	2145
24th	1864	130	1994	41	22	63	2057
25th	753	16	769	379	63	442	1211
26th	411	6	417	0	0	0	417
27th	1608	143	1751	0	0	0	1751

Precinct	White			Colored			Pct. Total
	State	Federal	Total	State	Federal	Total	
28th	1985	145	2130	0	0	0	2130
29th	1135	99	1234	1	0	1	1235
30th	1130	112	1242	39	2	41	1283
31st	719	98	817	6	1	7	824
32nd	1083	71	1154	45	8	53	1207
33rd	666	60	726	0	0	0	726
34th	593	79	672	9	4	13	685
35th	968	69	1037	2	0	2	1039
36th	627	61	688	0	0	0	688
37th	1602	112	1714	0	0	0	1714
38th	797	106	903	0	0	0	903
39th	2315	174	2489	49	9	58	2547
40th	996	44	1040	9	1	10	1050
42nd	91	4	95	1108	324	1432	1527
43rd	849	102	951	1	0	1	952
44th	1186	155	1341	58	0	58	1399
45th	776	90	866	0	0	0	866
47th	772	103	875	0	0	0	875
48th	1789	276	2065	3	0	3	2068
49th	1442	54	1496	0	0	0	1496
50th	2115	218	2333	1	0	1	2334
51st	824	96	920	0	0	0	920
52nd	2161	145	2306	0	0	0	2306
53rd	971	121	1092	0	0	0	1092
54th	589	36	625	0	0	0	625
55th	2207	161	2368	0	0	0	2368

PLAINTIFFS' EXHIBIT 18

Letter of Hunter B. Andrews to Honorable Edward L. Breeden, Jr., dated 17 November 1970

Commonwealth of Virginia
Senate

November 17, 1970

The Honorable Edward L. Breeden, Jr.
1530 Virginia National Bank Building
Norfolk, Va. 23510

Dear Eddie:

On behalf of the Senate P & E Subcommittee concerned with reapportionment, I respectfully request that you kindly confer with Senators Howell, Babalas, and Caton relative to your comments and views on senatorial districts in the 2nd Congressional District.

The Senate Subcommittee composed of Senators Hutcheson, Hirst, Long, Manns, Barnes, and myself, have been meeting from time to time relative to procedures and confines of congressional and senatorial redistricting. We have had the advice of the Attorney General and in essence we must adhere to mathematical exactness. The full P & E Committee directed the Subcommittee to proceed on the principle of determining congressional districts as mathematically exact as possible and then to solicit the views of concerned senators in the tentative new congressional districts on their ideas on senatorial districts within the confines of the new congressional district.

I want to emphasize that all proposals are tentative in that congressional district ideas will be submitted to the full committee for their approval and, of course, they have to receive the approval of the House Committee. They are tentative to the further extent that the population figures we are using are the most recent from the Census Bureau; but, are not in anywise final, although in your area we have added the appropriate personnel from maritime vessels to the population in Norfolk and Virginia Beach.

I am enclosing copy of the latest tentative plan for congressional districts and you will notice it embraces the City of Norfolk with a population of 305,060, and a portion of the City of Virginia Beach with a population of 155,631, giving a total for the congressional district of 460,691, which is 0.5% more than mathematical exact norm of 458,618. Because the population of the City of Virginia Beach is 171,631, we tentatively suggest that in the southern portion of the City of Virginia Beach some 16,000 people be based in the 4th Congressional District. The exact boundaries of such area, obviously, are dependent upon receipt of the Census Enumeration Tracts.

Working within the new boundaries of the new proposed 2nd Congressional District, we ask that you as the Senior member from that area confer with Senators Howell, Babalas, and Caton, and make suggestions, if you desire, concerning the division of this area to accommodate four (4) senators. We would appreciate this information by November 29, and if you have any recommendations, would you kindly transmit them either to me or John Boatwright in Richmond.

In essence, our problem under the present format is that the City of Norfolk has a population of 305,060 which includes 36,729 shipboard personnel, and the exact mathe-

matical norm for a separate senatorial district would be 114,654. The part of the City of Virginia Beach in the proposed new 2nd district has 156,000. We would ask that you consider whether you four gentlemen prefer.

(1) Four (4) senators at large from the new proposed 2nd district;

(2) Two (2) senators from a portion of the City of Norfolk having a population of approximately 229,000, and one (1) senator from the City of Virginia Beach in an area having 114,000 ±, with the overage remaining from Norfolk and the City of Virginia Beach being laid off in new boundaries as a separate senatorial district; or

(3) Separate senatorial districts laid off based upon Census Enumeration Tracts for each of the four (4) senators.

I trust you appreciate the difficulty of our undertaking and the spirit of confidence in which this matter is presently proceeding as we have no final census figures or final approval by the full P & E Committee. The same inquiry is being made in other parts of the State relative to the suggested new congressional district lines.

Naturally, I will be glad to confer with you if you think I can be of any assistance, if you all desire.

In our studies to date, we have found that it is necessary in certain portions of the State to divide counties or cities to arrive at mathematical exactness for not only congressional district but senatorial districts within the same.

Under the resolution authorizing the study, we are supposed to have a report by December 1; but, we find this impossible as the Census Bureau cannot give us final census figures on the counties and cities until after that date, and

subsequent to those figures we need the Census Enumeration Tracts which cannot be obtained until the first part of January. However, we believe the present preliminary census figures are within working tolerances to arrive at a study takeoff point.

Kindest personal regards, I remain

Very truly yours,

Hunter B. Andrews, Chairman
Privileges & Elections Subcommittee
on Reapportionment

HBA:jlw
Enclosures

cc: The Honorable John B. Boatwright, Jr.
The Honorable Henry E. Howell, Jr.
The Honorable Peter K. Babalas
The Honorable Edward T. Caton, III

PLAINTIFFS' EXHIBIT 21

Letter of Secretary of Commerce, dated September 21 1967 addressed to Mr. Thomas J. Reed

The Secretary of Commerce
Washington, D.C. 20230

Sept. 21, 1967

Mr. Thomas J. Reed
Director, Bureau of Business Research
Old Dominion College
Box 6173
Norfolk, Virginia 23508

Dear Mr. Reed:

It is my pleasure to inform you that effective this date I formally designate you a member of the Bureau of the Census unit of the National Defense Executive Reserve for a period of three years. Your certificate of designation is enclosed.

In becoming a member of this essential preparedness organization, you have increased your country's capacity to survive and recover from a national emergency. Your willingness to assume this responsibility is most gratifying.

The orientation and training you will receive under this program will enable you to serve your country effectively and with distinction should the need for your services arise.

Sincerely yours,

/s/ A. B. Trowbridge
Secretary of Commerce

Enclosure

PLAINTIFFS' EXHIBIT 22

Letter of A. Ross Eckler, Director, Bureau of the Census, dated October 4, 1967, addressed to Mr. Thomas J. Reed

U.S. Department of Commerce

Bureau of the Census

Washington, D.C. 20233

Oct. 4. 1967

Mr. Thomas J. Reed
Director, Bureau of Business Research
Old Dominion College
Box 6173
Norfolk, Virginia 23508

Dr. Mr. Reed:

I am pleased to send you the enclosed official certificate and letter, signed by Secretary Trowbridge, designating you as a member of the Department of Commerce National Defense Executive Reserve.

Also enclosed is a copy of the *Fact Finder for the Nation* which may be of some interest to you. We will keep you informed by mail of developments relating to the National Defense Executive Reserve program and Census activities.

I am looking forward to meeting with you at the National Conference this month. This conference will help to explain to you the purpose and plans of the Executive Reserve and will help to orient you in the work of the Bureau of the Census.

Let me take this opportunity to thank you for your willingness to serve your Government and to welcome you as a member of the Census Bureau unit of the Executive Reserve.

Sincerely yours,

/s/ A. Ross Eckler
Director
Bureau of the Census

Enclosures

PLAINTIFFS' EXHIBIT 23

Certificate of Appointment of Thomas J. Reed as a member of the National Defense Executive Reserve, issued by the Secretary of Commerce

United States of America
Department of Commerce

Reposing special trust and confidence in the patriotism, fidelity, and ability of

Thomas J. Reed

I do hereby designate him a member of the National Defense Executive Reserve.

/s/ A. B. Trowbridge
Secretary of Commerce

PLAINTIFFS' EXHIBIT 24

Letter of R. F. Foeller, Key Census Person, Southeastern Virginia Regional Planning Commission dated March 4, 1966, addressed to Mr. Thomas J. Reed

Southeastern Virginia Regional Planning Commission

March 4, 1966

Mr. T. J. Reed, Associate Director
Bureau of Business Research
Old Dominion College—Chandler Hall
Hampton Boulevard
Norfolk, Virginia

Re: 1970 Census

Dear Mr. Reed:

As Key Census Person for the Southeastern Virginia Regional Area, I wish to revise the old Census Tract Committee and establish a new Census Advisory Council. The new Council will serve a broader area than the earlier Tract Committee and, through its Key Census Committee will explore various aspects of the Federal Census and guide future regional programs related thereto.

I would greatly appreciate your accepting this invitation to become a part of the Key Census Committee to help guide the region in matters relating to the federal census and other related surveys to be made in the region. If you are unable to participate, would you name an alternate to represent your interest.

I attach a list of those presently being invited to participate. The Committee may be expanded in the future. I would approciate your suggestions for expansion.

The Census Advisory Council will have a much larger representation. We will rely on the Key Committee to help develop this membership.

I look forward to your acceptance of this invitation and your help in formulating policy on the forthcoming census activity.

Our first meeting with U.S. Census officials will be held March 16th at 10:00 A.M. Kirn Library, Norfolk. Please mark your calendar. More details later.

Sincerely,

/s/ R. F. Foeller
"Key Census Person"

RFF:jce
Enclosure

PLAINTIFFS' EXHIBIT 25

Letter of May 11, 1967, addressed to Dr. A. Ross Eckler, Director, Bureau of Census by T. J. Reed

May 11, 1967

Dr. A. Ross Eckler, Director
Bureau of the Census
Washington, D.C. 20233

Dear Dr. Eckler:

We at Old Dominion College are interested in many programs of the Bureau of the Census and look forward with a great deal of interest to increased detail of content and flexibility of tabulation of the 1970 Census. We were glad to have one of the Regional Census Conferences meet on our campus last June.

Looking toward the 1970 Censuses of Population and Housing, I am prompted to express interest in additional information on employment; some further information on married females with husbands absent; and perhaps some breakdown of the rental housing by private ownership, public housing, and Government owned quarters.

In connection with employment, I would like to see more precise information on place of employment and hope that information will be available on the number of persons holding two or more jobs together with the occupational and income relationship of the multiple jobs held. We would like to have the place of employment localized to the Census tract or perhaps smaller area. This would provide some very useful information needed in study related to the Community Shelter Program and the journey to work. This Bureau is presently engaged in compiling information on employment density for the Regional Planning Commission.

In this area we need better information on Navy families. The enclose copy of a page from the Norfolk Statistical Digest indicates that at the time of the 1960 Census, there were some 47,000 Navy personnel aboard ships homeported here. Some of these had families living in this metropolitan area. The enclosed data indicate an estimated 7,817 such households. These households would be enumerated with a female head, the husband being enumerated aboard ship. In 1960, there were 36,000 female heads of households, which included some of the 23,000 married females with spouse absent. We would like very much to know how many of these cases had the usual head of house enumerated aboard ship and, in fact, are "Navy families."

In order to better present information relevant to the local housing market, I would like very much to see information available on the ownership of rental housing, for example, private ownership, public housing, and Government-owned quarters.

Some of the information outlined above would probably be available only through special tabulation, but I mention these needs based on my experiences in this area and because they relate to information gathered by the Bureau of the Census in the past.

Sincerely,

T. J. Reed, Director
Bureau of Business Research

TJR:vpf
Enclosures
cc Mr. Conrad Taeuber
bc R. F. Foeller

PLAINTIFFS' EXHIBIT 26

Letter of Herman P. Miller, Chief, Population Division Bureau of the Census, dated June 1, 1967, addressed to Mr. Thomas J. Reed

U.S. Department of Commerce
Bureau of the Census
Washington, D.C. 20233

June 1, 1967

Mr. T. J. Reed
Bureau of Business Research
Old Dominion College
Norfolk, Virginia

Dear Mr. Reed:

Thank you for your letter of May 11. We very much appreciate your interest in our plans for the 1970 Census.

It is true that we hope to have increased flexibility of tabulations in connection with the 1970 population and housing data. However, because of pressing limitations of space, costs, and burden to respondents, the schedule content will probably be very similar to that of 1960, with relatively minor changes to meet current needs. These do not include the items you mention on dual jobholders or on type of ownership of rental housing.

With reference to place of work data, we are studying the possibility of getting specific address of place of work and coding it to the appropriate block side. This approach could yield place of work data for tracts, traffic zones, etc. A number of agencies and individuals have strongly recommended that we proceed in this manner. However, there are a number of technical issues involved, such as the ability to

get adequate addresses for place of work, the detailed area for which statistics can be presented, and the limitations which are imposed by the requirement to maintain confidentiality. The cost of this item is relatively high and it is not at all clear that this can be included in the budget. Even if included, the cost of preparing local detailed trip tabulations would undoubtedly have to be borne by the agencies requesting the tabulations. The whole matter is currently under study.

The interest in "Navy families" is certainly understandable in an area such as Norfolk. However, to obtain the information you desire would require changes in the enumeration procedure for the entire country which do not appear to be feasible.

If you have any further comments, or suggestions on any other part of the Census Bureau's program, we would, of course, be happy to have them.

Sincerely yours,

/s/ Herman P. Miller
Chief, Population Division
Bureau of the Census

PLAINTIFFS' EXHIBIT 27

Information furnished by the Attorney General of Virginia to Attorney General of the United States

OLD Senate Districts—1970 Census—Population and Racial Breakdown

tricts	No. of Senators	Location	Total	White	Negro	Other
2	3	Norfolk	307,951	215,055	87,275	5,621
3	3	Chesapeake	89,580	68,569	20,682	329
		Portsmouth	110,963	65,992	44,325	646
		Virginia Beach	172,106	154,828	15,688	1,590
			327,649	289,389	80,695	2,565
5	1	Isle of Wight	18,285	9,243	9,018	24
		Nansemond	35,166	16,134	18,960	72
		Southampton	18,582	8,535	10,026	21
		Suffolk	9,858	6,190	3,643	25
		Franklin	6,880	3,380	3,491	9
			88,771	43,482	45,138	151
	1	Newport News	138,177	97,887	39,208	1,082
3	1	Hampton	120,779	89,376	30,619	784
	1	Charles City	6,158	1,081	4,536	541
		Chesterfield	76,855	68,012	8,651	192
		Amelia	7,592	3,985	3,587	20
		New Kent	5,300	2,917	2,338	45
		Colonial Heights	15,097	15,000	59	38
			111,002	90,995	19,171	836
	2	Richmond	249,621	143,857	104,766	998
	1	Henrico	154,364	143,812	10,106	446

NEW Senate Districts—1970 Census—Population and Racial Breakdown

Districts	No. of Senators	Location	Total	White	Negro	Ot
2	1	Part of Newport News	*115,675	77,939	36,845	
3	1	Accomack	29,004	18,086	10,854	
		James City	17,853	11,447	6,309	
		Northampton	14,442	6,949	7,441	
		York	33,203	28,162	4,803	
		Williamsburg	9,069	7,869	1,154	
		Part of Newport News	*22,472	19,929	2,352	
		Total	126,043	92,442	32,913	
5	1	Part of Norfolk	*116,061	84,646	27,807	3
6	1	Part of Norfolk	*116,061	60,236	54,906	
7	1	Part of Norfolk	*75,747	70,136	4,518	1
		Part of Virginia Beach	*40,188	35,931	4,055	
		Total	115,935	106,067	8,573	1
8	1	**Part of Virginia Beach	*116,516	106,126	9,131	1
9	1	**Part of Richmond	*101,411	30,762	70,362	
		Split tracts	10,384	3,852	6,532	
		Total	111,795	34,614	76,894	
10	1	**Part of Richmond	*112,049	87,362	24,104	
		Split tracts	7,207	3,894	3,313	
		Total	119,256	91,256	27,417	
11	1	**Part of Richmond	*18,432	17,952	428	
		Part of Henrico	*39,716	33,664	5,930	
		**Part of Chesterfield	56,849	47,286	7,024	
		Total	114,997	98,902	13,382	

No. of Senators	Location	Total	White	Negro	Other
1	Part of Henrico	*114,608	110,116	4,176	316
1	Portsmouth	110,963	65,992	44,325	646
1	Chesapeake	89,580	68,569	20,682	329
	**Part of Nansemond	5,175	3,838	1,323	14
	**Part of Virginia Beach	*15,383	12,752	2,501	130
	Total	110,138	85,159	24,506	473
1	Amelia	7,592	3,985	3,587	20
	Brunswick	16,172	6,740	9,414	18
	Cumberland	6,179	3,180	2,992	7
	Lunenburg	11,687	6,605	5,068	14
	Mecklenburg	29,426	17,045	12,356	25
	Nottoway	14,260	8,558	5,686	16
	Powhatan	7,696	4,895	2,795	6
	**Part of Chesterfield	20,006	17,024	1,570	26
	Total	113,018	68,032	43,468	132

FOOTNOTES

* Census data on tract and lesser area racial information did not report, because of minor coding errors, the exact location of the following:

Newport News—19 whites and 11 negroes who are in the 2nd or the 3rd Senate districts.

Virginia Beach—19 whites who are in the 7th, 8th or 14th Senate districts.

Henrico—32 whites and 8 others who are in the 11th or 12th Senate districts.

Richmond—37 whites and 25 negroes who are in the 9th, 10th or 11th Senate districts.

Norfolk—37 whites, 44 negroes and 1 other are in the 5th, 6th, or 7th Senate districts.

** In certain instances detailed below the Senate district line splits the smallest census tract, district or block for which data on race is available.

1. In *Virginia Beach*, the district line between the 8th and 14th districts splits census tract 452. The total population of this tract is estimated to be in the 14th district because that portion in the 8th district is an operational rather than residential area of Camp Pendleton.

2. In *Chesterfield*, the district line between the 11th and 17th districts splits census tract 1009.05 which has a population of 3,764, of which 3,702 are white, 57 are negro and 5 are other. The population is estimated to fall 2,378 in the 11th and 1,386 in the 17th. We have no data on the racial split of this tract between the 11th and 17th districts and have, therefore, not included the tract in the racial breakdown so that the sum of white, negro and other in the 11th and 17th districts is 3,764 less than the combined totals for these districts.

3. In *Richmond*, the district line between the 9th and 11th districts splits census tract 1003.03 which has a population of 696 of which 684 are white, 1 is negro and 11 are other. This population is estimated to lie wholly in the 11th district as the map indicates all developed areas are within the 11th district. This population is added into the 11th district totals.

4. In *Richmond*, the district line between the 9th and 10th districts splits a series of census block groups. James Park,

Assistant Director of Planning and Community Development for the City of Richmond, reviewed these specific block groups and estimated the racial breakdown shown on the table. Of the total 17,667 persons in the split blocks, all 7,744 whites and 9,847 negroes have been allocated to either the 9th or the 10th district, but the 76 other persons are not allocated and not reflected in the totals.

5. *Nansemond* is split between the 14th and 15th Senate districts. The racial breakdown for the part of Nansemond in the 14th district is shown on the table. The balance of Nansemond is in the 15th district and equals 29,991 of whom 12,296 are white, 17,637 are negro and 58 are other.

April 15, 1971

The Honorable Henry E. Howell, Jr.
Member, The Senate
808 Maritime Tower
Norfolk, Virginia 23510

Re: Henry E. Howell, Jr., et al.
v.
Joan S. Mahan, et al.
Civil Action No. 105-71-N

Dear Senator Howell:

This office has made inquiry regarding the discrepancies between those population figures which the General Assembly has used for the purposes of reapportionment and which have been stipulated to, and those reapportionment figures submitted to the Department of Justice at their request as supporting data on the reapportionment Acts submitted pursuant to § 5 of the Voting Rights Act of 1965.

I have determined that the inaccuracies in the figures did occur in the second set of population data which was submitted to the Department of Justice. To my knowledge, the correct figures for reapportionment purposes are those which are attached to your Complaint as an exhibit and which we have stipulated to, with one exception. That exception occurs in the Fourteenth and Fifteenth Senatorial Districts. The population for Nansemond County in the Fourteenth Senatorial District should read 6877, rather than 7111, or a difference of 234. This would make the population for the Fourteenth Senatorial District 111,840 and the population for the Fifteenth Senatorial District 121,844.

The reason for this discrepancy is that the Senatorial Reapportionment Bill was amended after the Senate figures were compiled.

I would add that the errors in the figures submitted to the Department of Justice are due to the haste in which they had to be developed which necessitated accomplishing in three days (which included a weekend) a task which should have properly taken well over one week, and was further due to the utilization of a staff made up of individuals from different agencies who could be borrowed at the last minute.

Since the figures forwarded to the Department of Justice have been introduced by yourself as an exhibit in Civil Action No. 105-71-N, I am by carbon copy of this letter requesting the Clerk to file with the other papers in that case, a copy of this explanation.

Very truly yours,

Anthony F. Troy
Assistant Attorney General

AFT:lch

cc: The Honorable W. Farley Powers, Jr., Clerk
United States District Court for the
Eastern District of Virginia
Federal Building
Norfolk, Virginia 23510

Bcc: Mrs. Sally Warthen
Division of Statutory Research & Drafting
The State Capitol
Richmond, Virginia 23219

PLAINTIFFS' EXHIBIT 30

Affidavit

State of Virginia,
City of Norfolk, to-wit:

This day personally appeared before me, Catherine J. Crane, a Notary Public of and for the City aforesaid, whose commission expires on the 11th day of November, 1973, Henry E. Howell, Jr., who after being by me first duly sworn, deposed and said as follows:

That immediately upon passage of Senate Bill No. 125 on June 11, 1971, he obtained from Sally Warthen of the Division of Statutory Research and Drafting of the Commonwealth of Virginia the population figures now contained in Senatorial Districts Fifth and Sixth and she advised as follows:

Senatorial District Fifth	115,711 persons
Senatorial District Sixth	116,466 persons
Senatorial District Seventh	115,959 persons (No change)

An further this deponent saith not.

/s/ Henry E. Howell, Jr.

Given under my hand this 15th day of June, 1971.

/s/ Catherine J. Crane
Notary Public

DEFENDANTS' EXHIBIT 6

Affidavit

I, Conrad F. Taeuber, being duly sworn, hereby depose and say:

I was born in Hosmer, South Dakota, and have acquired the following degrees: A.B., University of Minnesota, 1927; M.A., University of Minnesota, 1929; Ph.D., University of Minnesota, 1931. I was a student at the University of Heidelberg (Germany) 1929-30. From 1935 to 1946, I served with the U.S. Department of Agriculture on agriculture and population problems; from 1946 to April 1951, I was Chief of the Statistics Branch of the Food and Agriculture Organization charged with the world-wide development of agricultural statistics; from April 1951 to May 1968, Assistant Director of the Census Bureau in charge of demographic fields, Associate Director since May 1968. My publications are as follows: Rural Migration in the United States (with C. E. Lively) in 1939; The Changing Population of the United States (with Irene B. Taeuber) in 1958; Contributor to Social Science Journals. I have received the following awards: University of Minnesota's "Outstanding Achievement Award," in 1951; Department of Commerce's "Exceptional Service Award," February 1963; Elected President of the Inter-American Statistical Institute in October 1967.

In accordance with Section 2a, Title 2, United States Code, the President must submit to the Congress in January 1971 a report which shall consist of:

> "(a) . . . . a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of population, and the number of

Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one member."

Although some of the details have varied over the decades, the 1970 enumeration requirements are similar in concept to those requisite in 1790, when the first census was taken. The specific procedures of enumeration have been modernized so as to assure the most complete and correct enumeration possible under the complexities of today's highly developed technological society.

An integral part of the enumeration methods are the procedures used in enumerating the various distinct types of populations to be counted in the census; which types include members of the Armed Forces, college students, staff and inmates of institutions and persons abroad at the time of the census. In all, specific procedures are provided for some 26 different types of situations to make certain that the requirement for counting the "whole number of persons in each State" is properly met.

The phrase, "the whole number of persons in each State" has historically been interpreted by the Bureau of the Census to include those persons whose usual place of residence was a particular State on the date of the census, including those persons present in the State who had no usual place of residence elsewhere.

Questions arise from time to time as to the interpretation of the phrase "whole number of persons"; an example being, whether the apportionment population should include non-citizens. This subject was debated by Congress in connection with the legislation which provided for the 15th Decennial Census (1930) and for the "automatic"

reapportionment of the House of Representatives following each national census. The House Committee on the Judiciary considered in some detail in 1931 the possibility of limiting the apportionment population solely to United States citizens but took no action. Thus, the "whole number of persons" is defined to include citizens and aliens, persons of voting age and those below voting age, persons who are entitled to vote and those who are not yet entitled to vote, as well as those who have lost the right to vote. It is not defined as persons who have established a "legal residence" in a particular State but includes those persons who, whether or not "legal residents" of that State, usually reside therein.

Members of the Armed Forces

In the census, each person enumerated in areas within the jurisdiction of the United States, including members of the Armed Forces, is recorded and counted as of his usual place of residence; i.e., the specific address at which he is living. In the administration of the census, this must be approached in a definitive manner rather than on a presumptive basis, if the census is to avoid missing substantial numbers of persons altogether, on the one hand, or extensive duplication of persons, on the other hand.

The criteria for determining usual place of residence are as follows: persons are enumerated at the place in which they generally eat, sleep, and work, with persons who are temporarily absent for a few days or weeks from such usual place of abode being counted as residents of their usual place of abode.

In the case of the Armed Forces in the United States, members are counted at the specific location where they are living at the time of the census; i.e., where they are actually

residing while in the service. The alternative procedure of counting them at the specific address where they might be presumed to be living if they were not in the Armed Forces presents a number of problems. There are those young men living in their parental home until induction into the Armed Forces and it could be presumed that they will return to their parental home when discharged. There are indications, however, that service in the Armed Forces may lead persons to settle in a different State on discharge. There are, similarly, young men who have left the parental home, who have married and started families. Presumably, they will return to their families, but frequently their service in the Armed Forces means a change of residence for their families, and it is by no means clear that they will return to their previous address. In addition, there are those young men who have left the parental home and who, prior to induction, are living in apartments or rooming houses. To assign them back to these living quarters, now occupied by someone else would raise the disturbing question as to who are the real residents of the living quarters. Finally, persons making a professional career of service in the Armed Forces may not have any real residence other than in the area in which they are serving.

Moreover, the presence of members of the Armed Forces in a particular State, of necessity, increases the financial burden on the local governments in those areas as a result of the increased volume of demand for public services e.g., police and fire protection, water supply, sewage disposal, highways, schools, and other county and municipal services. The aid to education which has been furnished by the Federal Government to impacted areas gives some indication of the magnitude of this problem. In many States, grants-in-aid made by the State governments are made on the basis of total population.

With respect to Armed Forces personnel stationed overseas at the time of the census, the Bureau is allocating such persons back to States constituting their home of record as shown on listings provided by the Department of Defense, which lists were provided for all of the services with the exception of the Navy. The home of record for Navy personnel was obtained from individual questionnaires because the Department of the Navy was unable to provide such information from its records in the form needed by the Bureau. Dependents of such military personnel who are living with them overseas are allocated to the State indicated as their home of record.

The 1970 Census is the first time the Bureau has allocated overseas military personnel back to the States on the basis of the home of record of the individual servicemen for purposes of apportionment; the reason being the unprecedented number (in excess of 1 million) of military personnel and their dependents stationed overseas on the census date.

The greatest problem confronting the Bureau in the allocation of these persons back to the United States was the determination of a basis upon which to do so. Virtually all of the problems which preclude the allocation of domestic servicemen back to their former residence would apply equally to servicemen stationed abroad, e.g., the likelihood that many will not return to the same State, let alone the same address. However, unlike domestic servicemen who, while stationed in a particular State, draw upon its resources, thereby providing a logical basis for allocating them to the State, servicemen abroad impose no burden upon a particular State. Consequently, the only plausible basis which the Bureau could use for such allocation would be the State which the particular serviceman designates as his home of record. Here again, the same rationale which

dictates against allocating domestic servicemen to a specific address within a State, would preclude allocation of overseas servicemen to specific areas within the State. Briefly stated, there is no way of assuring that these persons will return to a specific address, assuming they could report such a specific address in the first instance. An allocation based on such a tenuous assumption would be, at best, extremely inaccurate.

College Students

College students are enumerated where they are living while attending college. If a college student is living in a dormitory, other university housing, or in other housing near the campus, he is enumerated as a resident of that place. Likewise, if he lives in his parental home, or in his own home, and commutes to the college, he is enumerated at such place, i.e., where he actually lives while attending college.

In the 1940 and previous censuses, the procedure was to count the college students as residents of their parental homes even though they lived the better part of the year in the communities where they were attending college. There was evidence that this procedure led, in many cases, to the failure to enumerate the college student at either residence.

In November of 1948, with the number of college students increasing sharply, this problem was reviewed by the Bureau's Technical Advisory Committee on General Population Statistics, a group of independent experts in the fields covered by the 1950 Census. As a result of its study, the Committee concluded that all college students should be classified as residents of the communities in which they were living while attending college. Accordingly, it was recommended that the Bureau adopt such a procedure and the Bureau did adopt the recommended procedures for the 1950

Census. This matter was reviewed again prior to the 1960 and 1970 Censuses and in each instance it was determined that the procedures adopted for the 1950 Census provided the best method of enumerating college students. One of the primary factors considered in the original decision to enumerate college students where they are living while attending school was the evidence that a number of college students may not have been reported either by their families or at colleges. The difficulties involved in obtaining an accurate count of college students are partially explained by the fact that these persons represent a transitional group in our population, for this is the age at which young people tend to leave the parental home. Attendance at college is one of the common steps in that stage of a young person's life. It has been the experience of the Bureau of the Census that the way to make sure that they are counted in the census is to count them where they are living while attending college.

It would be inconsistent to apply to others the criteria for determining usual place of abode, i.e., enumeration of persons in those communities in which they generally eat, sleep and work, and yet make an exception for college students who leave the parental home to spend the greater part of the year in the community where the college is located. In virtually all college towns there is, for the most part, a constant student population for at least nine months of the year, and where summer sessions are held, the population is relatively constant throughout the year. The students live in the community, draw on its resources, rely on its public services and patronize its business establishments. It is the community in which these students actually reside which must plan and develop its public services to provide for all of its residents.

Inmates of Institutions

Persons confined to institutions, whether it be a penitentiary or correctional institution, mental institution, home for the needy or aged, or hospital for the chronically ill, etc., are enumerated as residents of the institution to which they are confined. As with members of the Armed Forces, and college students, it is conceivable that certain inmates of institutions might have a bona fide residence to which they might return upon discharge from the institution. However, a substantial proportion of such persons had no such place of residence prior to entering an institution. This is particularly true of persons committed to the various types of penal institutions, in which the entry on police record may well be "no fixed place of residence." Similarly, in the case of mental patients whose length of institutional stay may be long, the residential and community ties which they may have had before commitment have, in many cases, disappeared by the time they are ready for discharge. Persons under care in homes for the aged have, in a sense, by definition given up any independent residence outside the institution and have no place to which they can return.

The census required that every person be counted at a specific address or residence. This, of course, can be done if such persons are defined as residents of the place in which they are enumerated. To assign them to some other residence where they would presumably be living if they were not in the institution raises a number of problems which can never be satisfactorily solved. Reliance would need to be placed on the report of the inmates or on the institutional records, and this information is all too frequently inadequate to assign them to a specific residence. Moreover, if a specific residence is identified, it may well be occupied by other persons at the time of the census.

Adverse Effects to Defendants from Granting Plaintiffs' Motion

The granting of the relief sought by the Plaintiffs would completely invalidate the results of the 1970 Census and necessitate the taking of a new census for the entire country. A mandate to retake the census would make it impossible to reapportion the United States House of Representatives in time for the 93rd Congress, as required by the Constitution and Section 2a of Title 2, United States Code.

The 1970 Census did not seek information regarding the "legal residence" of college students, military personnel, or inmates of institutions. It might be argued that such information could simply be obtained by reviewing the data gathered in the 1970 Census and identifying persons coming within one of the above categories; once identified, it would be a simple matter to ask these persons their "legal residence." However, this is impossible for two reasons. First, the Census Bureau did not specifically identify all college students and military personnel as being in either of those categories. This results from the fact that many college students and military personnel do not live on campus or on the base and, therefore, were enumerated as any other resident of a private dwelling, without being identified as a college student or member of the Armed Forces. Secondly, many persons who were in the military, away attending college, or were inmates of institutions at the time of the taking of the census have since changed their status and, also, their address. The Bureau would have no way of finding these persons. Thus, the only remaining alternative would be to retake the census of the entire country in order to ascertain those persons falling within such categories.

In order to retake the census, the Bureau would have to seek a new appropriation from Congress in the approximate amount of $200 million (the 1970 Census cost in excess of $200 million). On the presumption that Congress would appropriate the additional funds, the Bureau would have to commence the lengthy process of preparing for the new census, and it would be virtually impossible to begin taking the census before the Spring of 1972. Assuming that the census could be taken by the Spring of 1972, the results could not be processed for presentation to the President prior to December of 1972, which would be too late for the apportionment of the 93rd Congress, the elections for which will be held in November of 1972.

/s/ Conrad F. Taeuber

Subscribed and sworn to before me
this 19th day of October, 1970.
/s/ Helen C. Robbins
Notary Public

EXCERPTS FROM DEPOSITIONS OF APRIL 9, 1971

* * *

[53] LARRY B. Wood, called as a witness, having been first duly sworn, was examined and testified as follows:

Examination by Mr. Howell:

Q Mr. Wood, state your full name, sir. A Larry B. Wood.

Q And how old are you, Mr. Wood? A Twenty-two.

Q And where do you live? A 7416 Patrician Road, Norfolk.

Q Have you heretofore looked at a map of the City of Norfolk and the City of Virginia Beach which I am opening up. Have you looked at this map previously? A Yes, sir.

Q Mr. Wood, have you been able to pick out on the map the approximate location of where you live? A Yes, sir.

Q If you would, sir, take this pen and put a little circle around where you live. A Right. Approximately here.

Q All right, I am going to put a circle around the dot. You understand, Mr. Wood, the dot within the circle is the approximate location of your home? A Yes, sir.

Q Who do you live with at that residence? [54] You may sit down, Mr. Wood. A I live with my parents there.

Q All right. And how many years have you lived at that residence? A Since April of 1968; approximately three years.

Q And how many years have you resided in the City of Norfolk? A Twenty-two years.

Q And how old are you? A Twenty-two.

Q So you were born in Norfolk? A Yes, sir.

Q Now, are you a member of the United States Navy? A Yes, sir.

Q And are you stationed aboard a vessel? A Yes, sir.

Q What vessel are you stationed aboard? A USS John F. Kennedy.

Q Is that an aircraft carrier? A Yes, sir.

Q And how many years have you been a member of the crew of the John F. Kennedy? A Since June, '68.

[55] Q And were you a member of the crew of the John F. Kennedy on April the 1st, 1970? A Yes, sir.

Q Will you tell us that when the John F. Kennedy is in port and you do not have night duty where do you spend the night—your nights? A I spend the night at home.

Q At your home. And at what address is your home? A 7416 Patrician Road.

Mr. Howell: All right. Answer such questions as Mr. Troy may have.

Examination by Mr. Markow:

Q Mr. Wood, on the Kennedy, that is a type of ship that puts out to sea quite often, is it not? A Yes, sir.

Q How long do you stay out when you go? A They make—let's see. A six-months' cruise is the longest cruise we make.

Q Do you make those very frequently? A Once a year.

Q Once a year? A About once every fifteen months.

Q And what do you do during the interim? [56] A After you get back off a cruise we usually have a yard period for major overhaul, and this is the time you train going in and out of port.

Q Are you a registered voter in the City of Norfolk? A Yes, sir.

Q Where was the John F. Kennedy on April 1st? A It was in the Norfolk Naval Shipyard.

Q It was here? A Yes, sir.

Q And you were on it? A Yes, sir.

Mr. Markow: No further questions.

Mr. Troy: This is off the record.
(Discussion off the record.)

Mr. Howell: All right. Larry, you are free to go.

Mr. Tayloe: Wait, let me—

Mr. Howell: Oh, excuse me.

Examination by Mr. Tayloe:

Q Larry, do you have a place to sleep or a bunk aboard ship? A Yes, sir.

Q And when you leave the ship do you have to [57] have the permission of the Commanding Officer or the

officer of the day to leave the ship on a pass? A We just have to have permission from the division officer.

Q And are there not times when this permission is removed whether it be for behavior or because of certain jobs that have to be done? A Only for misconduct would be the only reason.

Q All right. And therefore if the captain says you can't leave the ship you therefore stay?

Mr. Howell: We will stipulate that if the captain says he don't leave the ship he stays on the ship. That is stipulated too.

A Yes, sir.

* * *

Q Larry—Mr. Wood, tell us the regular hours that you are aboard ship and when you leave to go [58] home under ordinary circumstances when the John F. Kennedy is homeported here at Norfolk? A I usually work from eight in the morning till 1630 in the afternoon.

Q Which is what time? A Four-thrity.

Q Four-thirty. All right. And when four-thirty comes what do you do? A We go on liberty.

Q All right. Where do you go? A I go home.

* * *

T. J. REED, called as a witness, having been first duly sworn, was examined and testified as follows:

[101] * * *

By Mr. Troy:

Q All right, Mr. Reed, you testified that on [102] May 11, 1967 you wrote a letter to Doctor Eckler, is that correct? A That is correct.

Q And in that letter you expressed basically what you felt was a discrepancy in the manner of the taking of the census as to navy personnel? A No, not a discrepancy. A need to modify the procedures so as to get better information on navy families residing in the metropolitan area.

Q And you received a response to that letter, not by Doctor Eckler but by Herman P. Miller, Chief of the Population Division of the Bureau of Census? A Yes, this is the normal request directed to the director and a division chief or others will respond.

Q And he indicated to you that the request for the modification that you had expressed would not be feasible, isn't that correct? A Yes, that was his indication.

Q Do you have any idea as to the manner in which your letter was discussed or the deliberations of the Bureau of Census in coming to the conclusion expressed in the letter from Mr. Miller? A You mean what discussion they had in preparing the reply?

[103] Q Yes, sir? A No, sir, I have no indications. I have made similar suggestions in previous situations and had them adopted, so I had no reluctance to make such a request this time.

Q Yes, sir, but— A Both in the line of duty and as a volunteered adviser. In other words I have effected modifications in census procedures over a period of my thirty years of experience with the Census Bureau.

Q Yes, sir. A And there were some modifications suggested here but not a hundred percent.

Q So to answer my question you have no idea as to the deliberations? A That is correct.

Q Now, I am going to hand you an Esso map. I want you to take a look at it and tell me if you can identify it.

Mr. Howell: We object.

A I get them in batches of twenty-five. It is hard—

Mr. Howell: Just a moment. We object to the cross-examination of Professor Reed with respect to the Esso maps because none of it [104] was covered in the direct examination. And further, we deem the Esso map to be entirely irrelevant to the attack on the plan that was adopted.

By Mr. Troy:

Q Can you identify the map? A Well, I am familiar with the Esso map, but—

Q That Esso map has some lines on it though, doesn't it? A Yes.

Q Who drew the lines? A Well, if I drew any of them there have been some others drawn since, and I am not for sure.

Q So you did not draw that map? A This I am not sure. I have drawn a map.

Q Have you drawn a map similar to that? A Yes, but whether it was this one—

Q For what purpose did you draw the map? A For the setting up of senatorial districts.

Q In what City? A Norfolk.

Q At whose request? A Well, I did some in working with Senator [105] Breeden in one instance, and then later with Senator Howell and Senator Babalas subsequently to that.

Q You drew a line similar to those at whose request? Who was that for? A Well, I didn't know that there was a request. It was agreed that there was no suitable or appropriate way of subdividing the City and there were some lines drawn—there were more than one set of lines as a matter of fact, none of them recommended.

Q I am not asking who recommended—

Mr. Howell: Don't interrupt the witness. You have a right to finish, Professor.

A None of them were recommended. If the City was to be divided there was some alternate ways of dividing it to gain the balance of the population that was specified.

By Mr. Troy:

Q All right. I am going to hand you another Esso map. I want you to look at that one.

(Shown to the witness.)

A Yes.

Q Now, this is an Esso map of Norfolk, is it not? A Yes, it is.

[106] Q And it also has some lines drawn on it, does it not? A Yes, sir.

Q These lines basically represent what? A Well, if Senator Andrews were here, you would say the T-bone plan. I suppose that is what you mean.

Q This was a plan that was presented to the General Assembly by the P&E Committee for the dividing of Norfolk? A This I wouldn't know.

Q How do you know Senator Andrews called it the T-bone Plan? A I was present in the Senate Chambers on the day the debate was held and the plan was adopted.

Q What plan? A For senatorial districting.

Q And where did the "T-bone" phrase come from? A He didn't state the source.

Q Who said it? A Senator Andrews on the Senate Floor.

Q When did he say it? A On the Senate Floor.

Q I mean did he say it while he was unfolding [107] that and holding that in his hand? A I don't know that he was holding this in his hand at the time he said that. He referred to a T-bone plan.

* * *

By Mr. Troy:

[108] Q All right. Now, this purports to establish single member districts for the City of Norfolk in some fashion, does it not?

Mr. Howell: Just a moment. Professor Reed said he hadn't had anything to do with this map or these lines and—

Mr. Troy: He hasn't said that yet. Let him answer the question.

* * *

The Witness: What was the question?

Mr. Troy: Mr. Jaime.

(The question was read.)

A Well, it appears to do so, although they are not labelled nor identified as such, and it looks to be some tentative or some alternate or optional lines.

By Mr. Troy:

Q Did you have anything to do with the drawing of those lines? A No, I was with Senator Breeden when he was attempting to divide the Naval Base and he was then

debating on this line. He hasn't finished the line as [109] to where this line—where it goes from there is not indicated. It really hasn't divided. You see? It doesn't go to the City boundary of Norfolk but he was—

Q What was Senator Breeden deliberating when he was trying to cut the Navy Base like that? A He was very much interested in some way of dividing the population there, and I told him—

Q Go ahead. A I told him this was not possible, that the Naval Base as such—the crews of vessels as such were available separately but how you would divide them, there was no provision for that.

Q So that is why you subsequently presented a plan including the naval district in one senatorial district, did you not? A I presented no plan. I drew some alternate boundaries, none of them representing a recommended plan.

Q All right. The alternate boundaries that you drew and I understand you didn't recommend, then you drew them just to be helpful? A It was clear from the public hearing which I also attended that at least some attempt was to be made to divide the City of Norfolk into single member districts. It was not felt that this could be done properly and [110] appropriately to gain legislative representation, but that—

Q Now wait a minute. I don't mind you going on, but now you are volunteering on a basis that you have no authority to volunteer on.

* * *

By Mr. Troy:

Q Professor Reed, all I am trying to get down to is simply—very simply this: That when you drew the lines

to be helpful you included the whole Navy Base, [111] is that correct? A Yes.

* * *

By Mr. Troy:

Q Now, let us go to the sample survey, what you testified to, which reflects the number of sailors in Census Tract 9 and 9.99—or is it .99? A 9.99 only.

Q 9.99 only. We have no problem as to those 13,437 in Census Tract 9 who live in the Fifth Senatorial District, correct? A Yes, sir.

Q All right. So what we are concerned with now is 9.99 only, is that correct, which consists of 36,693. That is what the survey relates to? A That is right.

Q Now, you have testified, and also supplied an affidavit that 59 percent of that 36,693 or approximately 21,600 do not live in the Fifth Senatorial District, is that correct? A That is correct.

[112] Q Where do they live? A In what detail would you like? In Senate District 6? You wish the number by district?

Q Yeah, have you got it? A 5,050 in Senate District 6, 7,100 in the Norfolk portion of District 7 and 9,500 live outside the city limits of Norfolk.

Q They live in Virginia Beach and some live in Chesapeake? A Right.

Q And some live in Portsmouth? A Right.

Q Some live in Newport News? A Right.

Q Some live in Hampton? A I don't know of any living in Hampton.

Q How come you don't know of any living in Hampton. Did you look at this letter from Admiral Cobb? A Yes.

Q How do you come up these statistics on the basis of zip codes? Didn't you check the zip codes? A Yes, I checked yesterday for Norfolk and Portsmouth.

Q Do you know what zip code 23366 is? [113] A Not at the moment.

Q Zip code 23369? A Chesapeake, I believe. I used a postal directory for this.

Q Sir, I am going to hand you a code finder directory listing Virginia localities. I have one here for Norfolk and that breaks down into just the City. I want you to take a look at this and over on the right-hand corner I believe you will see the City of Hampton listed. A Right.

Q Is the City of Hampton broken down—what is the zip code by the City of Hampton in that? A 23369.

Q All right. Now I am going to hand you a zip code directory from Norfolk, Virginia, and I want you to open that and Norfolk is the first. The first three numbers are 235 in the zip code? A Right.

Q And the last two digits indicate location? A Within the City.

Q All right. Now, what is 23501? A That is the boxes under 3,000.

Q All right. And where— A At the main office.

Q Where did you include those people? [114] A District 5.

Q I am just going to lay out here—this is the present senatorial districts as adopted and I am just going to lay

this out for helpfulness. I want you to take a look on t
first page of this document. I have handed you zip co
23503. In your sample that consists of 74 people reportin
at zip code 23503— A Where are you getting that?

Q 23503. A Whereabouts are you finding that?

Q On the sample here. A Oh. Okay, okay.

Q And there were 74 people reporting there? A A
right.

Q All right. Now, 23503 is listed as Ocean View Sta
tion PO Boxes. Is that not correct? The first column just
little way down there? A Well, you have some there bu
you have others.

Q Wait a minute. A You have other listings.

Q I will get to those.

Mr. Howell: Just a minute, don't interrupt.

Mr. Troy: Senator, I have a question [115] put to him

Mr. Howell: Just a moment. He has a right to explai
his answer. A It includes both boxes, yes.

By Mr. Troy:

Q All right. Now, if you will— A Not limited t
that. Not limited to that if I might add.

Q No, it is not. That is what I am going to get to righ
now, Professor.

* * *

By Mr. Troy:

Q All right. Now, if you turn to the next to-the-la
page on this, Ocean View Avenue is also 23503, is it not
A Parts of it.

[116] Q Numbers 100 through 2099? A Right.

Q Did you make a comparison to find out where those numbers were with relation to Senatorial Districts 5, 6 and 7? A Yes.

Q Which districts are they in? A Three. All three.

Q All three? A Yes, sir.

Q All right. How did you break up the 74? A 35 in District 5, 12 in District 6 and 27 in District 7.

Q Now, what basis or authority—how did you come to those figures? A By an approximate adjustment figure allocation.

Q Okay. And of course this was all on the sample that was provided? A That's right.

Q Can you add up the sample? It adds up to 544, does it not?

Mr. Howell: Instead of 543?

Mr. Troy: Yeah.

[117] Mr. Howell: We don't know, but we will accept it.

Mr. Troy: It seems unusual to me that the Professor has gone through all this and hasn't even come up with the correct totals.

Mr. Howell: Well, I told him to accept the accuracy of the Commandment of the Fifth Naval District.

Mr. Troy: Will you stipulate that?

Mr. Howell: Yes.

Mr. Troy: It is already on the record.

Mr. Howell: Yes. I stipulate that I told Professor Reed to accept the sample.

By Mr. Troy:

Q As a census sample? A No.

Q By its very definition it is not? A It is a 100 per cent sample, if you wish.

Mr. Howell: We will stipulate that.

Mr. Troy: I am almost through, Senator.

Mr. Howell: Good.

Mr. Troy: We are getting along very fine much better than I anticipated, so—

[118] By Mr. Troy:

Q That zip code 23503 which was in an example, you broke that up on an adjustment basis? A Yes, into three different districts.

Q You had to do that in a number of other districts in here? A Right.

* * *

EXCERPTS FROM DEPOSITION OF APRIL 20, 1971

* * *

[5] CONRAD F. TAEUBER, a witness, was called for examination by counsel for the City of Norfolk, and, after having been first duly sworn by the Notary Public, was examined and testified as follows:

By Mr. Tayloe:

Q State your name, please, sir. A My name is Conrad Taeuber.

Q Would you state your address, Dr. Taeuber? A The address is Bureau of the Census, Washington, D.C.

Q Would you state what your position with the Bureau of the Census is? A I am Associate Director in Charge of Demographic Fields.

Q Would you briefly describe what this encompasses? A This encompasses responsibility for the work relating to the 1970 Census on population and housing, the 1970 Census of agriculture, and the programs of current surveys which the Bureau carries on, which relate to information about people, households and housing.

[6] Q What is your relationship to the Director of the Bureau of the Census? A I report directly to the Director. There are a number of Associate Directors of which I am one.

[7] * * *

Mr. Howell: I think you want to put all these in, but we recognize Dr. Taeuber is one of the Nation's outstanding demographers and experts in the field of enumeration and statistical matters relating to the United States Census.

[8] * * *

Q Drawing your attention to the 1970 Census and specifically where was the military man attached to a naval base vessel home ported in the United States counted for population purposes? A A military man stationed on a vessel home ported in the United States was counted as a part of the population of the home port to which that vessel was assigned.

Q Was there any change from tradition as to the counting of a person who was attached to a naval vessel? A Between 1960 and 1970 there was such a change in that in 1970 the person was counted at the home port to which the vessel was assigned.

In the 1960 Census and in previous censuses the practice had been to ascertain where the ship was present at 12:01 a.m. of Census Day and to count the ship's personnel as located at that place.

Q Was there any change as to where a person attached to the vessel itself was counted as to his residency? A No. The practice in both 1960 and 1970 as had been previous to 1960 was to count such personnel as on [9] the ship to which they were assigned.

* * *

By Mr. Tayloe:

Q The decision which is the means of counting population aboard a naval vessel, was there considered other alternatives as to how these men would be counted? A Yes.

This is part of the whole process which goes on at the Bureau of the Census; after each census we conduct studies of the completeness of count, of the accuracy of the information which we collected. We review [10] our practices in some detail and we do consult with advisors. We have advisory committees with whom we work quite regularly.

We solicit advice from many other people and throughout the decade we carry on studies, discussions, considerations of ways of improving the census operations.

One situation that came to our attention during these reviews was particularly with reference to the men aboard ship and the fact that a ship, and a fairly large ship, may actually be away from its home port for operational reasons or for any one of a dozen different reasons at the time of census, and that the practice that was followed in 1960 appeared to create some inequities because of the situation which arose when a ship which was normally located at one port happened to be away from that port on census day and therefore was counted at the other place.

It was felt after reviewing this and related situation it was felt that we could improve somewhat the accuracy of our count and also to avoid problems arising because of possible uncertainty of where people should be counted by going to this rule that the home port would determine where we count the personnel on a ship, [11] recognizing that the ship might at that moment, that is midnight, April 1, might at that moment be somewhere else.

Q Would you explain for the Court the rationale behind the census decision of placing these persons attached to a naval vessel aboard the vessel itself as a resident of that vessel? A This is consistent with the procedure that we follow in relation to people in the armed forces generally. We count members of the army at the place where they are stationed as we do members of the other branches of the armed service.

It is consistent also with the practice which we followed in relation to those persons who may work in one location, live there during the work week, and then go somewhere else, where they are maintaining a family for the weekend or for the balance of the week.

It has seemed to us that it is necessary in cases like that to avoid double counting, to avoid under counting, to adopt certain rules, and the rule that has worked best is the rule as I have stated it.

In relation to these men aboard ship, this is where they work, this is where they live during a considerable period of time, during a majority of their [12] time, and even when they are in port I understand they can leave the ship only at the—

Mr. Howell: Object.

The Witness: They can leave the ship only at the pleasure of the commander.

Mr. Howell: We note an objection to Dr. Taeuber testifying concerning an understanding.

By Mr. Tayloe:

Q I would like to now draw your attention to persons attached to military bases other than naval vessels, how they are counted for the purpose of population? A Let me distinguish between the people who are living in the United States, who are in the United States, and people who are outside.

If they are in the United States, they are counted at the military base where they are stationed. For persons outside the United States attached to the military, they are not counted as residents of any place.

There was a procedure for assigning them for the purpose of apportionment of the United States Congress, assigning them back to the home state. But there was no procedure for assigning them back to any locality within the state.

[13] Q Would you describe the rules that the U.S. Census Bureau used in the 1970 Census concerning institutions. public institutions, such as penitentiaries, local jails, hospitals, and college students? A College students are counted as residents of the place where they live while attending college. If they are living in a dormitory or campus housing, they are counted there.

Inmates of prisons and hospitals for the mentally deranged, mentally defective, are counted as of the place where this institution is located.

Q Penitentiaries? A Penitentiaries, yes, inmates of penitentiaries would be counted where the penitentiary is.

Q Local jails? A Local jails the rule is the same.

Q And again is this based upon a particular criterion established by the U.S. Bureau of Census? A Yes. This is based on the rules developed by the Bureau of Census in the light of long experience and careful studies of methods that would most effectively avoid undercounting and avoid double counting.

Q I show you a document entitled Affidavit [14] prepared in the case of The Borough of Bethel Park, et al. vs. Maurice Stans, in the United States District Court for the Western District of Pennsylvania, and I ask you if you can identify the document that I have just drawn to your attention? A Yes, I do.

Q There appears to be a signature at the end of the document with your name, is that your signature? A copy of your signature? A Yes, on this one it is a copy of my signature.

Q Could you tell what that document is, Doctor, for the record? A This document is an Affidavit which was prepared for submission in a suit identified as you did, which is labeled as Civil Action 70-1049.

Q And was this document prepared by you? A Yes, it was.

Q And would you tell the general substance of the document? A The general substance of the document has to do with the census procedure for determining how to count the whole number of persons which is the number that is [15] required particularly for apportionment for the federal Congress.

The suit was brought to raise questions concerning the allocation of members of the armed forces, the allocation of inmates of institutions, and the allocation of college

students under the specific rules of residence which the Census Bureau follows.

* * *

By Mr. Tayloe:

Q Could you give some idea for the Court the manner in which the decisions involving population counting [16] of military personnel and the institutions which you have discussed, how these decisions were made?

Mr. DuVall: Same objection. Really continuing objection. These will be shown by legal records and precedents and he is simply stating his opinion of what the decisions say.

By Mr. Tayloe:

Q That was not the question, but go ahead and answer the question. A Well, the objective in a census is to get a count, and a complete count, of persons at the place at which they usually live.

This is not necessarily the place of legal residence, but is as I stated, the usual residence of this individual.

In doing this, it is necessary to take account of the facts for some persons in our population there may be a question—

* * *

The Witness: And it has been necessary to develop certain rules which our enumerators can follow, certain rules which can be given to the population which [17] is asked to fill out the questionnaires.

And over the years we have developed these rules along the lines indicated previously. We do as part of every census carry on investigations to see how effectively these rules have been carried out to identify population groups for which it may be necessary to develop some modification

of the rules in order to meet this objective, counting every person, not missing anybody, and not counting anybody twice.

And as I stated previously, one such case did come to our attention in the review following the 1960 Census and that had to do with the question of these naval vessels.

* * *

By Mr. Troy:

Q It came to your attention with reference to the naval vessels. I take it this was with reference to the 1960 decennial census count? A Yes.

This did come up with the review of the 1960 count.

Q Did this review encompass, or could you give us [18] an idea of the man hours encompassed in the reviews, whether there were meetings, who were brought in on the meetings, and just an idea of the type of deliberation that went on? A Well, it's hard to break this out because this was part of a more general review.

I would say there were many meetings of our own staff, that is the persons on our own staff that were directly concerned, which includes Dr. Sheldon particularly and his colleagues.

It would include also some members of our field staff, the people who direct the actual collection of the data.

It would include also representatives of our geographic division which has the responsibility for giving us the maps and the boundaries, and setting out the boundaries of cities, municipalities, counties, census tracts, city blocks.

And this is a matter that would in the normal course of events as it was to be brought to the attention of the advisory committees with whom we meet from time to time to review all matters of census procedure and census concepts.

These advisory committees, the particular [19] advisory

committee involved in this type of issue is one we call population advisory committee, consists of experts in the demographic field from all parts of the country who we designate as members of this committee and who we bring in to meet with us from time to time.

Q On the basis of their deliberations and recommendations, the decision was made on how to enumerate navy personnel assigned to vessels? A My recollection is that it was just the other way around, that we brought a recommendation into them and they agreed that under the circumstances this was the most reasonable procedure.

Q You reported to the Commonwealth of Virginia two different total counts for the state. One was a count of some 4,690,000 individuals and the other was a count of 4,648,000 individuals.

I think you have already explained—that's a difference of some 42,000. I think you have explained that these individuals are the ones that were counted overseas and assigned only to the Commonwealth? A I don't recognize either of those numbers. I could verify it, and Dr. Sheldon, we could verify it. That is the difference between the resident population and [20] the apportionment populations.

Q I think we can stipulate for the record the numbers. My question is going to relate as to why did you give us two counts, and not so much as to the actuality of the exact figure, Doctor? A Well, that question is easily answered. The intent here is to recognize that for most purposes the population concept to be used is that of the resident population, that is the total number of persons living in the state, in this case the State of Virginia.

For purposes of Congressional apportionment we reported also the number of persons, members of the armed

forces, civilian employees of the federal government, and their dependents living with them overseas who were assigned to a home state, and this number was used in computing the number of representatives to which each state is entitled.

Q Was this done for every state? A This was done for every state.

Q And basically was the number used for Congressional reapportionment larger than the other number? A In all cases the number used for Congressional [21] reapportionment was larger than the resident population, and the difference was this group of persons who were living abroad at the time of the census.

Q The smaller number is used for local reapportionment and not congressional? A The smaller number is the number which we define as the resident population of the state, and it is used for many purposes.

[34] * * *

Cross Examination

By Mr. Howell:

Q Dr. Taeuber, are you acquainted with Dr. T. J. Reed of Old Dominion University? A Yes, I am.

Q How long have you known Professor Reed or T. J. Reed? A It's more than 20 years. I don't know exactly how many more.

Q And are you acquainted with his experience and qualifications to work with and correctly interpret United States Census Data? A Yes.

We regard him as very well equipped to work with such data.

Q And are you familiar and did you play a part in recommending that Professor Reed be appointed by the Secretary of the Commerce as a member of the census unit of the National Defense Executive Reserves? A Yes, I am.

[35] Q Would you state the purpose and function of the census unit of the National Defense Executive Reserves? A That reserve was appointed a number of years ago as part of an effort to be prepared for any crises, any catastrophe that might happen which would put the Bureau of the Census at its present location out of commission and persons were selected to serve in case of emergency to be able to bring together what might remain of the Bureau staff and records and to carry on the work which might be assigned to the Bureau under the circumstances.

Q Nationwide would the number that were appointed at any one time be in the neighborhood of 13? A It would be in that neighborhood, yes.

[38] * * *

Q Dr. Taeuber, I am interested in your opinion as to whether or not the primary purpose was for the apportionment of the Congress of the United States, and if not, feel free to elaborate on what you deem to be the primary purpose starting in its original concept for enumerating people in the United States of America? A Well, my opinion is that the 1790 Census was done primarily for the purposes of apportionment of the Congress.

Q The Congress? A Right.

[39] Q And I don't know whether you have a copy of your Affidavit. I have just gleaned it, of course, because it was just furnished to me during the course of this deposition, but I am on page 2, and I was very much interested

in the fact that you state in your Affidavit that although some of the details have varied the 1970 enumeration requirements are similar in concept to those requisite in 1790.

I would like to ask you just what you mean by that statement? A The purpose in 1790 as in 1970 is to establish the whole number of persons in each state and beyond that the whole number of persons in each area within the state.

Q Now, the whole number of persons within each area of the state, was that a primary purpose in the original concepts of the enumeration that was directed to be taken in 1790? A In 1790 the primary requirement as I understand it was the whole number of persons in each state.

Q And although in your affidavit you say that the concept has remained the same, do you wish to change that statement to say that you now have a primary purpose of determining the whole number of persons within certain [40] areas of the state or is it still primarily just for the purpose of reapportionment, determining the whole number of persons in the state? A My interpretation of that particular sentence is a little different from the one you are reading. I think the point we were trying to make here is that the concern is still with the persons living in a state rather than persons that may claim that state as their state of legal residence or voting entitlement or the state in which they pay taxes or any other bases.

The concept still is where does this person live or reside without getting into the question of legal residence.

To that extent the concept has remained the same.

Q Am I correct in stating that it is the assumption, or it was the assumption of the Bureau of the Census within the Department of Commerce when they took the 1970 Census that navy personnel not only work aboard the ves-

sels to which they were assigned, but lived on the vessels
A They lived on the vessels in the sense in which we u
the term, yes.

[41] Q If in the enumeration of airline pilots fo
say United Airlines the pilot maintained a home in Arling
ton, Virginia, with his family, and assume he had thre
children, and he had a route which required him to sleep i
five different motels as he carried out his particular assign-
ment for United, lived in five different motels located in five
different states on Monday through Friday but came home
and spent every Saturday and Sunday night in his $32,500
home in Arlington with his wife and three children, when
the census was taken either by mail form or any followup
by an actual personal interview, where under the 1970
Census criteria would that United pilot have been enum-
erated?

Mr. Tayloe: For the record the City objects on the
grounds that there is no evidence by the stretch of imagina-
tion which would hitch the factual situation with the hypo-
thetical given by Mr. Howell.

The Witness: Given all the circumstances as described,
he would have been asked at the motel or hotel at which he
was staying whether he had a place where he usually lived,
since he does not come under the category of a person who
lives and works in one place and perhaps spends his free
time somewhere else.

[42] This individual as described would have been the
temporary resident of a hotel or motel and these people
were asked to report themselves as of the place where they
usually lived.

Q So that in the case of the hypothetical United Air-
lines pilot he would have been enumerated in Arlington that

is the place where he lived with his wife and three children? A Given all the circumstances as described this would be consistent with the rules, yes.

Q Now, if we had a navy salvage tug home ported at Norfolk, Virginia, which 95 per cent of the year completed its tug duties and returned to the dock in Census Tract 9.99 it being known as the Naval Operations Branch within the language of the Census Bureau, and that tug boat crew—well, let's just take the tug boat captain for simplification purposes, was married and lived with his wife in an apartment that he rented in a particular area of Norfolk.

Would he be assigned to Census Tract 9.99 which would be the Naval Operations Branch or would he be enumerated with his wife and any other dependents that he had at his apartment on Little Creek Road which happens [43] to be just an average person's avenue in the City of Norfolk? A I'd like to consult Dr. Sheldon on that one. It's a very unusual case.

My interpretation would be that he would come under the general rules of being counted on the vessel which was home ported in Norfolk.

Q Now, is it not true that the primary reason for not counting that type of naval personnel who has a home and a wife and dependents within the Norfolk area the primary purpose for not counting that type of person where he usually sleeps rather than aboard his vessel was for enumeration conveniences of the Bureau of the Census? A There is a general situation in that there are a number of persons, you have drawn attention to one group, there are a number of other categories which might be described in which there could be some disagreement as to the proper place in which these people should be counted.

And the Bureau of the Census has found it necessary and useful to develop rules which will meet the major objectives for the majority of the groups, or for the [44] majority of the people in a group.

In any determination of this type, I suppose there are supposed to be some exceptional situations. But in a massive operation like the census, we are counting more than 200 million people, it is necessary to establish certain rules which can be interpreted and easily followed by the enumerators, by the individuals who may be concerned.

Q To your knowledge, in the taking of the 1970 Census, were any specific standards or criteria established for the sole purpose of the redistricting and reapportionment of any state legislative bodies? A No.

The answer would have to be no.

Q Dr. Taeuber, so long as the inhabitants worked and lived in the same state, the question of whether they be enumerated where they worked or where they lived would do no violence to the primary purpose of the Bureau of the Census to determine the whole number of persons within the state for the purpose of congressional reapportionment, is that correct? A For purposes of congressional reapportionment the only number that is required is the total population of [45] the state, that is correct.

Mr. Troy: Senator I would like to also object that again your question is misleading and seems to indicate that this is the only purpose of enumeration which I don't think the witness has testified to.

By Mr. Howell:

Q Dr. Taeuber, are you familiar with the allocation of mailing areas by zip codes that exists within the United States?

I am not talking about specific zip codes but the general plan. A I am familiar with the system, yes.

Q Do you feel that if one knew the number or if one had an accurate sample of a group of people allocated by zip code mailing addresses that a demographer or a person with statistical experience such as specifically the experience that you know that Professor T. J. Reed has, could make a fairly accurate allocation of general residences by analyzing the zip codes with reference to census tracts and specific locations within any particular city? A It might be possible to make a usable approximation. The zip codes don't necessarily correspond [46] to city boundaries, to census tract boundaries, to any other boundaries recognized for other purposes.

But by comparing the areas which are covered one could make a reasonable approximation to the numbers of persons involved, yes.

Q I don't suppose, Dr. Taeuber, that you are familiar with the three lines that have been drawn to set out three senatorial districts in the Norfolk-Virginia Beach area, you are not at all familiar with those? A No, I am not at all familiar with that.

Q I just have one or two more questions.

Mr. Troy: Excuse me, sir. I'd like to make an objection for the record that the response of Dr. Taeuber with reference to the ability to make a sample on zip codes in no way reflects the credibilitty of the sample made by Professor Reed.

I think that credibility would speak for itself. Professor Reed didn't even know all of the zip codes in making his determination.

Mr. Howell: Off the record.
(Discussion off the record.)

By Mr. Howell:

Q Dr. Taeuber, if you received information [47] regarding census tract 9.99 in Norfolk, Virginia, that being the census tract that is designated as naval operations branch which had the piers to which were assigned a fairly significant number of vessels home ported at Norfolk, and if you determined from the census information which had been furnished by you to me which indicated that 36,693 individuals were enumerated as constituting crews of naval vessels home ported at Norfolk, and if you were further reliably advised and found it to be accurate, and that 21,600 of these persons enumerated aboard these vessels maintained local residences within the general region with their wives and other dependents, and if you found that an economical method could be devised for the naval personnel who have been assigned the responsibility of enumerating navy people on behalf of the Census Bureau, that they could use it with facility and without a great deal of expense, would you as a leading administrator in the Bureau of the Census desire to have information as to the number of persons aboard vessels home ported in Norfolk who actually when their ships were in live with their wives and children, if they had children, at different locations in the general area? [48] A I think if I had such information I would want to study the matter very carefully to see whether actually this kind, the kind of use which you suggested, could be made of it, and to see what the implications of it would be.

Q Now, in your affidavit which was introduced by Mr. Tayloe and which was relied upon by District Judge Gurley in the Bethel Park against Maurice Stans case you have pointed out many valid reasons why military persons

stationed within a state should be enumerated as constituting the whole number of persons within that state.

On page 4 of your affidavit you point out the need for police and fire protection, sewerage disposal, highways and schools, and other county municipal services and an effective method of mass transportation for the sailor who didn't have an automobile.

And you refer in here to the very important allocation, namely federal impact funds for schools. These services that are desired and that are necessary to properly—that should be properly furnished to members of the armed forces are area wide services that will be used in the area at large rather than at any one [49] particular census tract.

Is that a correct conclusion regarding the services that you have enumerated on page 4 of your affidavit? A Yes, that is essentially correct.

Mr. Howell: That's all the questions we have.

Cross Examination

* * *

By Mr. Troy:

Q As you indicated, Professor Reed is a member of the census unit National Defense Executive Reserve. In that capacity, are such members involved in the decision making process of the Bureau with regard to methods of enumeration? A In that capacity they are not. They are experts in the field. They are as free as anyone else is to make suggestions but the purpose for the reserve was not to consult on specific methods relating to the census.

* * *

[50] Q Now, going to more or less concepts of enumeration, does the legal concept of residence or domicile play a role in the enumeration of the population? A No.

Q So what concept is it, where the person lives rather than where he thinks he lives? A The concept is essentially one of usual resident, where does the person actually live.

Q Does this concept apply not only to a state as a whole, but to areas in each state? A Yes.

Q Now, you do enumerate for purposes other than mere congressional reapportionment, and I say that for example based on the evidence that you supply most states two figures? A The census data are used for many other purposes including in many states for districting, apportionment and districting for the state legislative [51] bodies.

Q Now, you have mentioned to Senator Howell that there was disagreement, or there could be possible disagreement, in may areas when you get down to certain situations and certain groups of individuals as to where they do live.

What certain types of groups are encompassed in the concept that you could disagree as to where they live? A I think one of the major groups involved would be the migratory workers, migratory-agricultural workers who move about from place to place.

There are certain other kinds of seasonal workers for whom there could be a question, about whom there might be some dispute.

Q What other groups? A Well, there are other groups of workers, construction workers for instance, who might be required by the nature of their jobs to be somewhere other than the places where their families are living.

And then there are people who maintain two homes. People who may have a home in the city or a home some-

where in the country. And they pay taxes in both [52] places. They vote at only one. And there might be a question should they be counted in the one place or should they be counted in the other place?

Q College students? A There could be a question about college students, yes.

Q Inmates of institutions? A There have been questions raised about inmates of institutions particularly inmates of certain kinds of hospitals.

Q And as we know, military men? A Yes.

Q Now, what the Census Bureau has done is make decisions with reference to all these possible areas of disagreement and decisions have been made on the concept that the Census Bureau uses, and that is where a person mainly lives, rather than where his legal residence or domicile is? A We are concerned primarily with where he usually lives. In most cases this is also his legal domicile, but in cases of question we would be concerned with where he usually lives rather than asking specifically about legal domicile or voting residence.

[53] Q And your deliberations covered the areas—the group areas of disagreement which we have just enumerated? A Yes.

Mr. Troy: I have nothing further.

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PETITION FOR LEAVE TO INTERVENE

1. Petitioners William S. Thornton, Philmore Howlette, John M. Brooks, E. L. Slade, and Arthur Brown, seek to intervene to set forth the claims alleged in the attached Complaint in Intervention, and to preserve their rights as members of the plaintiff class presently represented by the named plaintiffs DuVal, et al.

2. The instant litigation, involving the apportionment and districting of the House of Delegates of the Virginia General Assembly, may or will have a conclusive and binding effect on the petitioners' rights under the first and fourteenth amendment to the Constitution of the United States. Moreover, each of the petitioners is black, and therefore asserts rights under the fifteenth amendment and under various statutes including the Voting Rights Act of 1965, 42 U.S.C. § 1973, which may or will also be conclusively or bindingly affected by the judgment in this case.

3. One of the questions raised in this case concerns the action of the Attorney General of the United States in reviewing the apportionment plan pursuant to 42 U.S.C. § 1973c. Petitioners Thornton and Howlette actively participated in the proceedings leading to the action of the Attorney General of the United States, and the petitioners here represent the class of black voters who are the intended beneficiaries of the Voting Rights Act's protections.

4. The named plaintiffs, DuVal, et al., may not or cannot represent petitioners' interests adequately.

5. Petitioners have not sought to intervene before because, until the General Assembly recessed on May 11, 1971 (contrary to the Governor's recommendation), petitioners could reasonably believe, and did so believe, that the General Assembly would comply with 42 U.S.C. § 1973c, rather

than attempt to enforce a law to which the Attorney General had interposed an objection.

Wherefore, petitioners pray that this Court, pursuant to Rule 23(d) and Rule 24(a) and (c), Fed. R. Civ. P., grant leave to intervene, to file the attached Complaint in Intervention, and to participate in the case with full rights as plaintiffs.

Petitioners further pray that the pre-Trial Order of this Court, entered March 17, 1971, be amended to allow them to file stipulations, exhibits, and other documentary evidence, limited to the issues raised in their Complaint in Intervention, as well as a list of possible witnesses (to be called only in the event that defendants refuse to stipulate), on or before Friday, May 21, 1971, and to allow them to file a short legal memorandum in support of their proposed findings of fact and conclusions of law on or before Thursday, May 20, 1971.

* * *

Statement Pursuant To Local Rule 13

In compliance with Rule 13, Rules of the United States District Court for the Eastern District of Virginia, petitioners state that they rely upon the following authority in support of the foregoing petition:

Mann v. *Davis,* 245 F. Supp. 241 (E.D. Va. 1965) (Order allowing petitioners Thornton, Slade, Brooks and others to intervene).

Notice

To All Counsel:

Please take notice that the foregoing Petition for Leave to Intervene will be brought on before the Honorable Robert R. Merhige, Jr., at the United States District Court for the

Eastern District of Virginia, on May 24, 1971, at 10:00 A.M., or as soon thereafter as the Court may allow.

* * *

COMPLAINT IN INTERVENTION

1. In accordance with Rules 23(d) and 24(a) and (c), Fed. R. Civ. P., William S. Thornton, Philmore Howlette, John M. Brooks, E. L. Slade, and Arthur Brown [hereinafter called "plaintiff-intervenors"] hereby intervene to allege that the defendants' plan for apportioning the Virginia House of Delegates violates plaintiff-intervenors' rights under the first, fourteenth and fifteenth amendments to the Constitution of the United States, and under federal statutes including section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

2. Plaintiff-intervenors are all citizens of the United States and residents and qualified electors of the Commonwealth of Virginia and the City of Richmond. Each is a black person.

3. Each plaintiff-intervenor sues on his own behalf and on behalf of all those similarly situated, including particularly all black citizens of the Cities of Richmond, Norfolk, Portsmouth, Newport News, and Hampton. This is a proper class action under Rule 23(b)(2), Fed. R. Civ. P.

First Count

4. Plaintiff-intervenors adopt paragraph 1-8 of plaintiffs' complaint.

5. On March 1, 1971, defendant Holton signed House Bill 63, containing an amendment to Virginia Code § 24.1-12.1 in the form of a new apportionment plan for the House of Delegates of the Virginia General Assembly. A

copy of House Bill 63 is attached as Exhibit C to the plaintiffs' Complaint.

6. Five large independent cities in the Commonwealth of Virginia have substantial concentrations of black people: Richmond, Norfolk, Portsmouth, Newport News, and Hampton. Under the apportionment formula of House Bill 63, each of these cities constitutes a single district represented by a number of Delegates elected at-large (with three of the cities also sharing additional floater Delegates with neighboring territory).

7. The following table shows the districts assigned each city, the population by race of each city, and (where applicable) the population by race of the entire floater district:

City (District)	White Pop. (and %)	Black Pop. (and %)	Total (Incl. "Other")
Richmond			
33d—5 seats	143,857(57.63%)	104,766(41.97%)	249,62
35th—1 seat with Henrico Co.	287,669(71.21%)	114,772(28.41%)	402,98
Norfolk			
39th—7 seats	215,055(69.83%)	87,275(28.34%)	307,95
Portsmouth			
41st—2 seats	65,992(59.47%)	44,325(39.95%)	110,98
42d—1 seat with Va. Beach & Chesapeake	289,389(77.66%)	80,695(21.65%)	372,68
Newport News			
49th—3 seats	97,887(70.84%)	39,208(28.38%)	138,17
Hampton			
50th—2 seats	89,376(74.00%)	30,619(25.35%)	120,77
52d—1 seat with James City Co., York Co. & Williamsburg	136,854(75.65%)	42,885(23.71%)	180,90

8. In each of these cities, black people constitute a cognizable minority who generally share political, economic and social interests on many questions which diverge significantly from the interests of the white population.

9. The above-described minorities are large enough and concentrated enough to have a significant or decisive ability to elect or participate in the election of a candidate or candidates of their choice, if the districts are fairly drawn.

10. The creation of large multi-member districts in these cities, however, with representatives elected at-large, operates to minimize and cancel out the voting strength of the above-described racial and political element of the voting population.

11. The floterial districts for Richmond and Portsmouth (Districts 35 and 42) further dilute the black voting strength by combining those cities with neighboring areas whose percentage of black population is considerably smaller.

12. *Violation of Law.* For the reasons stated above, the districts assigned to the five named cities, namely Districts 33, 35, 39, 41, 42, 49, 50 and 52, violate the plaintiffs' first amendment rights to free speech, association, and petition, and their fourteenth amendment rights to equal protection, and their fifteenth amendment rights to vote without abridgement or denial on account of race.

Second Count

13. Plaintiff-intervenors reallege paragraphs 1-11 of this Complaint in Intervention.

14. House Bill 63 constitutes a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect

on November 1, 1964," and therefore may not be enforced unless the requirements of section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, are met.

15. 42 U.S.C. § 1973c provides as follows:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State of subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of

three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court."

16. On March 1, 1971, defendant Holton transmitted House Bill 63 to the Attorney General of the United States with a request for a decision pursuant to 42 U.S.C. § 1973c.

17. On March 16, 1971, the Attorney General of the United States transmitted a letter to defendant Holton, saying the material submitted on March 1 had provided insufficient information upon which to proceed with the statutory determination, and requesting additional essential material. The letter also said the 60-day period provided under 42 U.S.C. § 1973c would not begin to run until submission of the additional essential material.

18. Thereafter, defendant Holton provided some or all of the additional material requested in the letter of March 16.

19. On March 4, March 16, and April 23, 1971, plaintiffs Thornton and Howlette, and their counsel, transmitted letters to the Attorney General of the United States, arguing that the use of multi-member and floterial House of Delegates districts in large cities with substantial concentrations of black population diluted the votes of black residents of those cities, and concluding that the Attorney General should therefore interpose an objection to House Bill 63.

20. On May 7, 1971, the Attorney General of the United States transmitted a letter to defendant Holton interposing an objection, pursuant to 42 U.S.C. § 1973c, to the House of Delegates multi-member districts in Hampton, Newport News, Norfolk, Portsmouth and Richmond.

21. Despite the aforesaid letter, the defendants have announced that they intend to enforce the provisions of House

Bill 63, and that the primary elections for nominations to the House of Delegates seats created by House Bill 63 will go forward on June 8, 1971.

22. *Violation of Law.* The defendants' threatened enforcement of House Bill 63, without complying with the requirements of 42 U.S.C. § 1973c for establishing that it is not racially discriminatory violates the rights of the plaintiff-intervenor class under 42 U.S.C. § 1973c and under the fifteenth amendment to the Constitution of the United States.

Equity

23. Plaintiffs have no adequate remedy at law. Unless this Court grants an injunction, the plaintiffs will suffer irreparable injury to their precious rights under the first, fourteenth and fifteenth amendments to the Constitution of the United States.

Relief

24. Wherefore, plaintiff-intervenors pray that this Court grant relief as follows:

(a) Declare that House Bill 63 violates the first, fourteenth and fifteenth amendments to the Constitution of the United States, and 42 U.S.C. § 1973c;

(b) Enjoin the defendants from taking any steps with respect to electing Delegates pursuant to House Bill 63, including without limitation furnishing forms of nomination; receiving the names of candidates, notices of candidacy or petitions therefor; and conducting or allowing the holding of the Primary Election scheduled for June 8, 1971, or the General Election scheduled for November 2, 1971;

(c) Order the defendants to take all necessary steps to reapportion the House of Delegates in accordance with the Constitution and laws of the United States, such steps to

include without limitation adopting single-member districts for the five cities listed herein, obtaining proper clearance under 42 U.S.C. § 1973c, and submitting the new plan to a further hearing of this Court;

(d) As an alternative to (c), Order all parties to this suit to file apportionment plans within thirty days, following which the Court will adopt a plan and take all steps necessary to insure that such plan may be enforced by the defendants;

(e) For purposes of allowing all parties to participate effectively in either the further hearing specified in paragraph (c) or in the preparation and submission of alternative plans specified in paragraph (d), Order that all parties to this suit shall be afforded reasonable and necessary access (including copies and printouts) to census data, maps, demographic information, and computer and data processing equipment, at the cost of the Commonwealth of Virginia;

(f) Grant such further relief as may be appropriate, including costs, fees, and a reasonable attorneys' fee to the plaintiff-intervenors; and

(g) Retain jurisdiction to enter such further orders in the conduct of this case as may be appropriate.

* * *

LETTER, MAY 7, 1971, ACTING ASSISTANT ATTORNEY GENERAL DAVID L. NORMAN TO C. B. MATTOX, CITY ATTORNEY OF RICHMOND, VIRGINIA

Dear Mr. Mattox:

As you know, the Supreme Court recently held in *Perkins v. Matthews*, 400 U.S. 379, 388-89 (1971), that "[c]hanging boundary lines by annexations which enlarge the city's number of eligible voters . . . constitutes the change of a

'standard, practice, or procedure with respect to voting,'" within the meaning of section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. This letter concerns your submission of a 1969 annexation to the city of Richmond.

Municipal annexations are, of course, commonly undertaken for a variety of reasons and affect a number of areas of concern to local governments. Section 5 is not addressed to annexations per se; but the Attorney General is obliged under section 5 to be concerned with the voting changes produced by an annexation. In the present instance, the city of Richmond elects representatives to its governing body on an at-large basis; its population is approximately evenly divided between whites and blacks. The submitted change would increase the city's population by approximately 43,000 new residents of whom a very small minority is Negro. In the circumstances of Richmond, where representatives are elected at large, substantially increasing the number of eligible white voters inevitably tends to dilute the voting strength of black voters. Accordingly, the Attorney General must interpose an objection to the voting change which results from the annexation.

You may, of course, wish to consider means of accomplishing annexation which would avoid producing an impermissible adverse racial impact on voting, including such techniques as single-member districts. See *Chavis* v. *Whitcomb*, 305 F. Supp. 1364 (S.D. Ind. 1969). Moreover, section 5 permits seeking approval of voting changes by the United States District Court for the District of Columbia irrespective of any previous submission to the Attorney General.

Sincerely,

David L. Norman,
Acting Assistant Attorney
General
Civil Rights Division

ANSWER OF DEFENDANTS JOAN S. MAHAN, ET AL., TO COMPLAINT AND INTERVENTION OF PLAINTIFF INTERVENORS, WILLIAM S. THORNTON, ET AL.

Now come the defendants, Joan S. Mahan, et al., by counsel, the Attorney General of Virginia, and in response to the Complaint in Intervention filed herein state as follows:

First Defense

Defendants adopt as part of their Answer herein, the Answer heretofore filed in response to the Complaint in this case as though fully set forth herein.

Second Defense

In further response to the First Count of plaintiff intervenors' Complaint, defendants aver as follows:

(A) That plaintiff intervenors fail to state a cause of action in that:

(1) They have shown only population by race of the cities of Richmond, Norfolk, Portsmouth, Newport News, and Hampton which, by itself, is immaterial;

(2) No allegations have been asserted that Negroes are ghettoized and prohibited from exercising a voting block influence over the election of any candidate to any public office;

(3) In fact the black population of each of the above named cities exerts a decisive and effective voice in the election of senators and delegates from said cities.

(4) Plaintiff intervenors have no constitutional right to the formation of homogeneous legislative districts.

(5) Plaintiff intervenors express only their political preference and not the personal, constitutional right of individual Negro citizens of the cities named.

(B) That multiple-member districts are not a *per se* violation of constitutional requirements even where a jurisdiction has a cognizable racial or political element of the voting population.

(C) That in any regard, the case of *Chavis* v. *Whitcomb*, 305 F.Supp. 1364 (307 F.Supp. 1362) (S.D. Ind. 1969), now pending in the Supreme Court of the United States will, if decided on the merits, be dispositive of plaintiff intervenors' Complaint and this court should abstain from ruling on the substantitive issues raised pending such decision.

Third Defense

In further response to the Second Count of plaintiff intervenors' Complaint, defendants aver as follows:

(A) Defendants admit the allegations of Paragraph 14 of the Second Count, except as to the political jurisdictions of the Cities of Norfolk and Newport News where the type of representation and number of representatives was not changed, each previously having and still having multi-member representation with seven and three delegates, respectively, assigned to each jurisdiction.

(B) Admit the allegations of Paragraph 16 of the Complaint, except that the bill in question was delivered on March 2, 1971, directly to the Attorney General of the United States by the Governor of the Commonwealth of Virginia.

(C) That the allegations of Paragraphs 17, 18, 19 and 20 are all factual matters which will be supported by appropriate documents that defendants would be willing to stipulate to.

(D) Defendants deny the allegations of Paragraphs 21, 22 and 23 of the Complaint.

Wherefore, having fully answered, the defendants move the Court as to Count One of the Complaint to dismiss the same for failure to state a cause of action, or, in the alternative, to postpone a decision on the substantive issues raised by the litigation, pending a determination by the Supreme Court of the United States in *Chavis* v. *Whitcomb, supra.* As to Count Two, defendants pray this Court find that the Commonwealth of Virginia has fully complied with the requirements of 42 U.S.C.A. § 1973 (c) in that the Acts in question were submitted to the Attorney General of the United States and may now be enforced, since the Attorney General has failed to interpose any objection within sixty days after such submission. Additionally, defendants pray that they recover their costs in this behalf expended.

* * *

MOTION FOR SUMMARY JUDGMENT

In accordance with the provisions of Rules 56 (b) and (c) of the Federal Rules of Civil Procedures, defendants Edgar A. Prichard, et al., by counsel, hereby move the Court to enter summary judgment for the defendants against black plaintiff-intervenors on the ground that the pleadings present a matter of law now settled that said intervenors are not entitled to single member districts. Further, the only issue presented is based upon a question of law, in that defendants aver that the stipulation heretofore filed herein,

black plaintiff-intervenors Exhibit #4, was in fact not fully agreed to by counsel and move the Court to withdraw the same. Defendants are entitled to and will demonstrate that they are entitled to judgment as a matter of law.

Defendants rely upon the following authorities in support of this Motion:

Mann v. *Davis,* 245 Fed. Supp. 241 (E.D. Va. 1965); *Chavis* v. *Whitcomb,* ..... U.S. ..... (June 7, 1971); *Carnegie Steel Co.* v. *Cambria Iron Co.,* 185 U.S. 403, 22 S. Ct. 698 (1902).

STIPULATION

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties hereto as follows:

A

Within the state legislative districts for the metropolitan areas of Hampton, Newport News, Norfolk, Portsmouth and Richmond (House District Nos. 33, 35, 39, 41, 42, 49, 50, and 52) there now exist clearly definable "ghetto" areas. That is, there are within those urbanized areas, sections which are primarily residential in nature and which are characterized by a relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area. Furthermore, these sections typically are inhabited predominantly by members of racial, ethnic, or other minority groups, most of whom are of lower socio-economic standards than the prevailing standards in the metropolitan area. Finally, those who reside in these so-called ghettos do so largely as a result of social, legal, and/or economic restrictions or customs.

B

It is apparent that the ghetto sections of these five urban areas are readily identifiable from surrounding sections. Moreover, it is equally as apparent that the residents of these ghetto sections have a special interest in the areas of substantive law such as housing regulations, welfare programs, garnishment statutes, and unemployment compensation, among others.

C

Each of the black plaintiff-intervenors is black and resides in the City of Richmond, is over the age of 21, and is otherwise qualified to vote in all elections held in the City of Richmond. Black intervenors William S. Thornton and Philmore Howlette actively participated in the proceedings leading to the action of the Attorney General of the United States taken pursuant to 42 U.S.C. #1973c. The black plaintiff-intervenors adequately represent the class of black voters who are the intended beneficiaries of the Voting Rights Act's protections.

D

None of the current legislators representing the legislative districts for the five metropolitan areas reside within the ghetto areas of those districts.

E

That Dr. William S. Thornton, if called, would testify in accordance with the affidavit dated May 21, 1971 and submitted herein as black plaintiff-intervenors Exhibit #3.

F

No stipulation herein made is to be taken as an admission that any fact is relevant or material, or is to be accorded any particular effect or weight. Each party reserves the right to introduce such additional evidence, depositions, testimony, or affidavits as the rules and this court will permit and the right to cross-examine any witness whose testimony is herein stipulated.

Affidavit

District of Columbia }
City of Washington } ss.:

I, R. STEPHEN BROWNING, one of the attorneys for the black plaintiff-intervenors, do depose and say as follows:

The 1970 Decennial Census of Population made by the United States Bureau of the Census is reported both in printed form and, in greater detail, on a series of computer tapes for each state. For Virginia, there is presently available the "First Count Summary Tape," which provides certain population and housing information by various units of population. Among the information available on the First Count are a number of categories relevant in defining the boundaries of areas, like "ghetto areas," containing identifiable "racial or political elements of the voting population," *Fortson* v. *Dorsey,* 379 U.S. 433, 439 (1965); *Chavis* v. *Whitcomb,* 305 F. Supp. 1364 (S.D. Ind. 1969).

The attached printouts show, for each "census tract" (an area usually containing 4000-6000 people) in the standard metropolitan statistical areas (SMSA's) containing Richmond (SMSA 6760), Norfolk-Portsmouth (SMSA 5720), and Newport News-Hampton (SMSA 5680), the following information, among others:

1. Printout No. 1 contains for each census tract the population figures, by number and percentage, for each of the categories white, black, and "other."
2. Printout No. 2 contains for each census tract the following:
   a. Percentage of homes with values of less than $15,000 (column 5);
   b. Percentage of housing units with monthly rentals of less than $80.00 (column 6);
   c. Percentage of units with more than one person per room—"overcrowded" (column 8); and
   d. Percentage of units without adequate plumbing (column 9).

This information, when plotted on census maps, provides the raw material for beginning to define a "ghetto area." In order to make the initial definition (which is subject to refinement by using additional information, and by breaking it down for units other than census tracts), I included in a ghetto area each census tract 60 percent or higher black population and having two or more of the following characteristics:

1. more than 60 percent of owned homes with values of less than $15,000;
2. more than 60 percent of the rented units with rents of less than $80.00 per month;
3. more than 15 percent of the people living in overcrowded conditions; and
4. more than 5 percent of the people living in houses without adequate plumbing facilities.

As so defined, the ghetto areas for the five cities in question are as follows:

Richmond:

—90% black: 103, 107, 110, 201-209, 301, 302, 402

—60% black: 108, 109, 211, 411, 413-415, 601-604

Total ghetto population: 102,001

Total ghetto black population: 88,980

Norfolk-Portsmouth:

—90% black: 25, 27, 30, 34, 41-45, 47, 48, 50, 52, 53, 58, 111, 112, 114, 117, 119, 120, 20902, 21302, 3501, 3502

—60% black: 36, 46, 51, 105, 110, 118, 121, 202, 207, 4001, 21302

Total ghetto population: 122,820

Total ghetto black population: 113,157

Newport News-Hampton:

—90% black: 302, 304-308

—60% black: 120,303

Total ghetto population: 37,972

Total ghetto black population: 35,943

/s/ R. Stephen Browney

Sworn to and subscribed before me this 21st day of May, 1971.

/s/ Helen P. Marion
Notary Public

My Commission Expires: June 1, 1975

STATE OF VIRGINIA:
CITY OF RICHMOND, to-wit:

This day personally appeared before me, the undersigned Notary Public in and for the City of Richmond in the State of Virginia, William S. Thornton who made oath that the following statements are true to the best of his information, knowledge and belief:

For the past fifteen years I have been active with statewide political organizations and for the past seven years I have served as Chairman of the Crusade for Voters of Virginia. In this position I have gained knowledge of the political, economic, and social interests and conditions which exist in the political jurisdictions throughout the State of Virginia, particularly in the cities of Richmond, Norfolk, Portsmouth, Newport News, and Hampton.

Each of the black plaintiff-intervenors in the above captioned cause is black and resides in the City of Richmond, is over the age of 21, and is otherwise qualified to vote in all elections held in the City of Richmond. Black intervenors William S. Thornton and Philmore Howlette actively participated in the proceedings leading to the action of the Attorney General of the United States taken pursuant to 42 U.S.C. #1973c.

In each of the above named cities, black people constitute a cognizable minority who generally share political, economic and social interests on many questions which diverge significantly from the interests of the white population.

The above-described minorities are large enough and concentrated enough to have a significant or decisive ability to elect or participate in the election of a candidate or candidates of their choice, if the districts are fairly drawn.

The creation of large multi-member districts in these cities, however, with representatives elected at-large, op-

erates to minimize and cancel out the voting strength of the above-described racial and political element of the voting population.

The floterial districts for Richmond and Portsmouth (Districts 35 and 42) further dilute the black voting strength by combining those cities with neighboring areas whose percentage of black population is considerably smaller.

Within the state legislative districts for the metropolitan areas of Hampton, Newport News, Norfolk, Portsmouth and Richmond (House District Nos. 33, 35, 39, 41, 42, 49, 50, and 52) there now exist clearly definable "ghetto" areas. That is, there are within those urbanized areas, sections which are primarily residential in nature and which are characterized by a relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area. Furthermore, these sections typically are inhabited predominantly by members of racial, ethnic, or other minority groups, most of whom are of lower socio-economic standards than the prevailing standards in the metropolitan area. Finally, those who reside in these so-called ghettos do so largely as a result of social, legal, and/or economic restrictions or customs.

It is apparent that the ghetto sections of these five urban areas are readily identifiable from surrounding sections. Moreover, it is equally as apparent that the residents of these ghetto sections have interest in the areas of substantive law such as housing regulations, welfare programs, garnishment statutes, and unemployment compensation, among others, which diverge significantly from the interests of non-residents of the ghetto.

In each of the aforementioned cities, the areas in which the large concentrations of black citizens reside have been identified by local, state and federal governmental agencies

as target areas which are eligible for special programs. See, for example, Exhibit "A" which indicates the overlapping of the anti-poverty (STOP) program area, the proposed Model Cities Program area, the Urban Renewal Project, and the Public Housing Projects of the City of Norfolk.

None of the current legislators representing the legislative districts for the five metropolitan areas reside within the ghetto areas of those districts.

Sub U

/s/ William Thornton

Subscribed and sworn to before me, the undersigned Notary Public, this 21st day of May, 1971, at Richmond, Virginia.

My commission expires: June 3, 1973

/s/ Sandra M. Owens
Notary Public

ORDER TO AMEND COMPLAINT IN INTERVENTION

On motion for leave to amend their complaint in intervention, made by the plaintiff-intervenors William S. Thornton, et al. and by others who by virtue are joined as such plaintiff-intervenors,

It is ORDERED that said motion be and the same hereby is allowed and that the complaint in intervention heretofore filed by William S. Thornton, et al. be, and the same is hereby amended by interlineation as follows:

In paragraph 1 (one), immediately preceding the words "Arthur Brown" delete the word "and"; and immediately after the words "Arthur Brown" add: "W. Lester Banks and Walter T. Kenney of the City of Richmond, Florence B. Reid of the City of Norfolk, Reuben L. Bouie of the

City of Portsmouth, Vearland F. Thompson, II, of the City of Newport News, and Nellie Harvey of the City of Hampton."

In paragraph 2 (two), delete the words "and the City of Richmond" and, at the end of the paragraph, add the sentence: "Each of the six last named intervenors resides in a part of his or her city which is inhabited predominantly by black persons most of whom are of lower socio-economic standards than the prevailing standards in his or her city."

May 24, 1971

United States District Judge

* * *

EVIDENTIARY STATEMENTS ON BEHALF OF BLACK PLAINTIFF-INTERVENORS

Pertinent figures from the 1970 Census returns are as follows:

The State	Total Population 4,648,494	Negro Population 865,388
Norfolk	307,951	87,275
Richmond	249,621	104,766
Newport News	138,177	39,208
Hampton	120,779	30,619
Portsmouth	110,963	44,325

The Constitution of Virginia as proclaimed to go into effect on July 10, 1902 initiated poll tax payments and literacy and "understanding" tests as impediments to the exercise of the right to vote. (Constitution of Virginia (1902) §§ 18 to 23, incl.). Thereafter, the election of Negroes to public office became a thing of the past and so continued to

be until 1948 when Oliver W. Hill obtained a seat on the Council of the City of Richmond.

Virginia became a one party state wherein the attainment of the nomination of the Democratic Party was tantamount to election to state-wide office and also to public office in practically all of the political subdivisions, particularly the cities of Richmond, Norfolk, Newport News, Hampton and Portsmouth.

In 1947, Oliver W. Hill, a Negro seeking the Democratic nomination (tantamount to election) for one of Richmond's seven seats in the House of Delegates, placed 8th in a field of 18, having 190 votes less than the lowest winning candidate.

In 1949, W. L. Ransome, a Negro seeking the Democratic nomination for one of Richmond's seven seats in the House of Delegates, placed 12th in a field of 17, having 4,949 votes less than the lowest winning candidate.

In 1951, Roland D. Ealey, a Negro seeking the Democratic nomination for one of Richmond's seven seats in the House of Delegates, placed 8th in a field of 14, having 2,228 votes less than the lowest winning candidate.

In 1955, Oliver W. Hill, again seeking the Democratic nomination for one of Richmond's seven seats in the House of Delegates, placed 10th in a field of 12, having 4,127 votes less than the lowest winning candidate.

In 1957, Colston A. Lewis, a Negro seeking the Democratic nomination for one of Richmond's seven seats in the House of Delegates, placed 8th in a field of 14, having 692 votes less than the lowest winning candidate.

In 1959, Thomas H. Henderson, a Negro seeking the Democratic nomination for one of Richmond's seven seats in the House of Delegates, placed 9th in a field of 9, having 1,748 votes less than the lowest winning candidate. His total

vote was 10,975; the highest vote was less than fourteen thousand.

In 1961, Colston A. Lewis, again seeking the Democratic nomination for one of Richmond's seven seats in the House of Delegates, placed 11th in a field of 12, having 4,413 votes less than the lowest winning candidate.

In 1965, Dr. Wm. Ferguson Reid, a Negro, sought the Democratic nomination for one of the eight House of Delegates seats which since 1962 had been allotted to Richmond and Henrico County. After recount he was declared to be a nominee; but he was eliminated in the general election as a result of a successful write in campaign conducted by the supporters of the candidate who had trailed him in the primary.

In 1967, Dr. Reid was again a Democratic nominee and ran as a part of a slate opposed by a slate of Republican candidates which also included a Negro. The eight Democrats were elected and, thus, Dr. Reid became the first Negro in the General Assembly since Reconstruction.

In 1969, Dr. Reid was re-elected.

In 1969, William Robinson, a Negro, placed fourth among the contestants for the Democratic primary nominations for Norfolk's seven seats in the House of Delegates. He placed seventh in the general election and, thus, became the second Negro to obtain a seat in the General Assembly in this century.

In the Special Election for the vacant Senate seat J. Fred Pollard (then Lieutenant-Governor) polled 6,115 votes, Morrill M. Crowe (former Mayor of Richmond) polled 10,318 votes and Lawrence Douglas Wilder (a Negro attorney) polled 15,839 votes. Thus, Senator Wilder became the third Negro to be elected to the General Assembly in this century.

At the November 1969 general elections in Norfolk in which William P. Robinson moved from fourth place primary nominee to seventh place (successful) candidate, one Roland Walton, a Negro who had won the Democratic primary nomination for the office of Commissioner of Revenue, lost to an independent white candidate by a vote of 16,433 to 23,864. In the primary Walton had received 10,258 votes while his two white opponents had received 9,697 votes and 10,258 votes respectively.

The 1960 Census revealed that Richmond had a total population of 219,958, of which 92,331 were white. The General Assembly in 1962 combined Henrico County with Richmond for at-large representation in the House of Delegates.

In 1969, Richmond won an annexation suit against Chesterfield County. The population now contained within the pre-annexation boundaries of the City of Richmond is 202,359, of which approximately 51.5% are black. The portion annexed from Chesterfield County has a population of 47,262, of whom fewer than 1% are black. As a result of the annexation, the total population of the enlarged city, according to the 1970 Census, is 249,621, of whom 143,857 (57.6%) are white and 104,766 (42%) are black; 0.4% being counted as "other." The Attorney General of the United States yet holds that the annexation violates the Voting Rights Act.

Not one member of the House of Delegates resides in a so-called ghetto area of the city from which he was elected. Only three Negroes have been elected to the General Assembly in this century.

* * *

DEFENDANTS' RESPONSE TO EVIDENTIARY STATEMENT ON BEHALF OF BLACK PLAINTIFF-INTERVENORS

Now come the Defendants, Joan S. Mahan, et al., by counsel, the Attorney General of Virginia, and in response to evidentiary statements on behalf of black plaintiff-intervenors state as follows:

First, some misstatements of black plaintiff-intervenors should be clarified. They intimate that Virginia has utilized an "understanding" test and that poll tax and "literacy" tests have been used discriminatorily. Section 20 of the 1902 Constitution of Virginia required that a citizen must make "application to register in his own handwriting, without aid, suggestion, or memorandum, . . ." An "understanding" test (requiring applicants to demonstrate their ability to read and explain provisions of the Constitution) which plaintiffs indicate was a part of the Constitution was not contained in the Constitution and in fact an original proposal for such a test was defeated. Debates, Const. Conv. 2937-2940, 3076-3077 (1901-1902).

Next, the poll tax requirements and literacy test requirements have never been found to be administered discriminatorily. See *Harper* v. *Virginia State Board of Elections*, 86 S. Ct. 1079 (1966); 1961 Report Civil Rights Commission Vol. I, pp. 22, 102.

The only additional comments that Defendants can make to the remaining evidentiary statements are that their allegations seem to be, as the Supreme Court has stated in *Whitcomb* v. *Chavis*, ". . . a mere euphemism for political defeat at the polls." Or, to phrase it another way, under our system of government one individual wins an election and his opponent loses the election. Defendants do not mean to imply that such a basic tenet has to be emphasized to this Court but apparently it must be emphasized to the intervening plaintiffs.

* * *

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the plaintiff-intervenors William S. Thornton, Philmore Howlette, John M. Brooks, E. L. Slade, Arthur Brown, W. Lester Banks and Walter T. Kenney, of the City of Richmond, Florence B. Reid of the City of Norfolk, Reuben L. Bouie of the City of Portsmouth, Vearland F. Thompson, II of the City of Newport News and Nellie Harvey of the City of Hampton hereby appeal to the Supreme Court of the United States from the Interlocutory Order entered in the above-captioned action on July 2, 1971 and particularly: (1) from so much thereof as denied the prayers of said plaintiff-intervenors for single-member districts for each of the above-mentioned cities, (2) from so much thereof as creates a new Thirty-eighth District composed of the City of Portsmouth and a party of the City of Chesapeake and allots to it four delegates and (3) from so much thereof as combines the City of Norfolk with a part of the City of Virginia Beach into the Thirty-ninth District and allots to it seven delegates.

This appeal is taken pursuant to 28 U.S.C. § 1253.

* * *

DEFENDANTS' EXHIBIT A

February 18, 1971

The Honorable John N. Mitchell
Attorney General of the United States
The Watergate Hotel
2650 Virginia Avenue, N.W.
Washington, D. C.

Dear John:

As I told you by telephone yesterday, we expect to complete action on our decennial reapportionment of the Virginia Senate, the House of Delegates, and the Congressional Districts by the middle of next week.

This legislation will have to be submitted to you for your review pursuant to the Voting Rights Act of 1965. If no action is taken by your office within 60 days after submission to you, the legislation will stand approved. I believe that many such legislative items have been approved in the past by inaction on the part of the Attorney General within the 60-day period.

As I told you, however, we will have elections for all members of the legislature in Virginia in 1971 and unless we have some assurance that our legislation meets with your approval, we will have serious problems with requirements for candidates meeting filing deadlines. This problem can be avoided if we can obtain your approval of our legislation before March 31. I believe that Virginia is the only State in the Union with this situation this year.

We are anxious to keep this extraordinary session of the General Assembly in session by a recess rather than adjourn until we know the outcome of the review by your office. This

procedure will permit us to make any modifications in our reapportionment legislation which might be required by your review, although in my judgment consideration of these reapportionment bills was totally free of any racial motivation or overtone, and I do not expect that you will find any objections to them.

It would therefore be particularly helpful to us if you could arrange for the review by your office to be complete somewhat before March 31 in order that we can adjourn the session of our General Assembly, sine die, not later than March 31. Such action will enable the new legislation to take effect in time to avoid any conflict with the election process this fall.

I will hand deliver the legislation to you, with the official request for review by your office, just as soon as it is passed. I hope, however, that you can indicate to me that this review can be completed somewhat in advance of March 31. This will be very helpful to us for our planning purposes.

It was good to talk to you; please give my best regards to your pretty bride.

Cordially yours,
Linwood Holton

DEFENDANTS' EXHIBIT B

Commonwealth of Virginia
Office of the Governor
Richmond 23219

March 1, 1971

The Honorable John M. Mitchell
Attorney General of the United States
Washington, D. C.

Dear John:

Pursuant to the requirements of Section 5 of the 1965 Voting Rights Act, I submit to you herewith the following acts of the 1971 General Assembly:

House Bill No. 63 (Reapportionment of the Virginia House of Delegates)

House Bill No. 191 (Reapportionment of the U. S. Congressional Districts)

Senate Bill No. 53 (Changes to the Virginia Election Law)

Senate Bill No. 54 (Reapportionment of the Virginia Senate)

Additional related information, which I believe should be self-explanatory, is enclosed. If your staff has any questions or needs further information, Virginia Attorney General Andrew P. Miller will be more than happy to comply immediately with your requests. Please contact him through his assistant, Anthony F. Troy at 703/770/2071.

As I told you in my letter of February 18, we will need to know the results of your review by March 27, 1971, in

order that the Virginia General Assembly can take corrective action, if necessary, when it reconvenes on March 29, 1971.

Cordially yours,
Linwood Holton

DEFENDANTS' EXHIBIT C

Mar 16 1971

Honorable Linwood Holton
Governor of Virginia
Richmond, Virginia

Dear Governor Holton:

This is in reference to your submission to the Attorney General under Section 5 of the 1965 Voting Rights Act of the reapportionment of state senator, delegate and congressional districts in Virginia which was received by this Department on March 1, 1971. This also confirms a telephone conversation between Anthony Troy of the Virginia Attorney General's office and departmental attorney Peter Mear on March 11, 1971.

After a preliminary examination of the initial submission, this Department has determined that the data sent to the Attorney General is insufficient to properly evaluate the changes you have submitted. In order to fulfill its responsibilities under federal law in determining the effect of changes with respect to elections and voting, this Department must have as much racial information and legislative history as is available. In this regard would you please assist us by providing this Department, as soon as possible, the following information.

1. The total number of registered voters in each county and city and in each senatorial, delegate and congressional district, both before and (an estimate of the totals) after the submitted reapportionments;

2. The racial population of each county and city and of each senatorial, delegate and congressional district before and after the submitted reapportionments;

3. The names, home addresses and race of each state senator, delegate and U. S. Congressman;

4. The legislative history of each reapportionment (the date and names of the sponsoring legislators for each bill, the date and names of sponsoring legislators for each amendment, the date of the final passage of the bills and the names of each legislator who voted in opposition to the bill or any amendment thereof);

5. A map showing the precise district boundary for any senate, delegate or congressional district which divides any county or city;

As you know, the Attorney General has a 60-day period to consider enactments submitted pursuant to section 5. This time period will begin to run when the Department has available the information necessary to evaluate your changes.

If we can assist you in any way in gathering the information necessary to make your submission complete or should you wish to discuss any questions raised by this letter, please do not hesitate to call on me or my staff.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

cc: Mr. Anthony F. Troy
Assistant Attorney General
Richmond, Virginia 23219

DEFENDANTS' EXHIBIT D

March 21, 1971

Mr. Jerris Leonard
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D. C.

Dear Mr. Leonard:

I hand you herewith the information requested in your letter of March 16, 1971, to the Honorable Linwood Holton, Governor of Virginia, as further delineated in conversations between myself and Mr. Peter Mear of your office on March 17, 1971.

The information is as follows corresponding to your five numbered requests:

First, enclosed is the total number of registered voters for each county and city of the Commonwealth as of January 1, 1970. Mr. Mear informs me that this information is needed to properly determine the effect the petition signature provision of 250 voters will have, as required by amendments to § 24.1-168 and § 24.1-185. We have therefore indicated those election districts wherein 250 signatures would be more than presently required by the 1% provision.

Second, enclosed is the total racial population for the old and new election districts of Norfolk, Richmond, and their adjacent areas and of the Congressional Districts. Again it is our understanding from Mr. Mear that racial population as supplied is sufficient for the purposes of the Department.

Third, enclosed are the names and addresses of each member of the General Assembly and each United States Con-

gressman from the Commonwealth. (The names and addresses of the three black representatives in the General Assembly have previously been supplied to Mr. Mear.)

Fourth, enclosed is what legislative history is available, including that relating to amendments which were rejected, and the yeas and nays whenever a rollcall vote was recorded.

Fifth and last, enclosed are maps of all election district lines which cut across political boundaries.

Sincerely yours,

Anthony F. Troy
Assistant Attorney General

AFT/fpl
Enclosures

DEFENDANTS' EXHIBIT M

[Letterhead Omitted]

Office of the Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219
703-770-2071

March 29, 1971

The Honorable Joan S. Mahan
Secretary, State Board of Elections
State Capitol
Richmond, Virginia 23219

My dear Mrs. Mahan:

I am in receipt of your inquiry regarding, *inter alia*, whether candidates for the November 1971 General Assembly election may file for the June primary notwithstanding that by the filing deadline of April 9th the Attorney General of the United States, acting under the provisions of the Voting Rights Act of 1965, will not have indicated if he has objections to the Virginia reapportionment plans, nor will the 60 day period for interposing such objections have expired.

The reapportionment Acts, passed by the 1971 session of the General Assembly, became law upon the Governor's signature and took effect immediately in accordance with the provisions of Art. II, Sec. 6, of the revised Constitution of Virginia. The question remains, in light of the provisions of the Voting Rights Act of 1965 to which Virginia is subject, as to when such Acts may be implemented.

Pertinent to this question is Sec. 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973 (c), which sattes:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission. . . ."

You will note from this language that the purpose of the Act is to insure that no person shall be denied the right to vote for failure to comply with any qualification, prerequisite, standard, practice or procedure unless the same shall first have been submitted to the Attorney General without objection subsequently being interposed or a declaratory judgment secured that the change does not have the effect

of denying or abridging the right to vote on account of race or color.

The first date on which implementation of the reapportionment Acts could possibly effect any person's right to vote would be the primary election date of June 8 ,1971.

All other practices and procedures including filing of candidacies for such primary are in conformity with the provisions of the election laws of Virginia, Title 24.1 of the Code, which became effective December 1, 1970, and have been submitted to the Attorney General, who interposed no objection.

Consequently I am of the opinion that individuals may, pursuant to the provisions of the election laws presently being administered, file as candidates for the newly created districts between March 25, 1971, and April 9, 1971, notwithstanding that the new districts have not yet been implemented, as long as they can be implemented by the date of the primary.

There can be no doubt that, in the absence of interposition by the Attorney General, such implementation is possible since the sixty day period provided by Sec. 5 of the Voting Rights Act of 1965 will expire on May 1, 1971.

Since Art. II, Sec. 6, of the revised Constitution requires reapportionment of the General Assembly in 1971, previously existing legislative districts have no validity with respect to the November general election of this year nor to any legislative primary conducted in connection therewith.

With kindest regards, I remain

Sincerely yours,

Andrew P. Miller
Attorney General

APM:T

DEFENDANTS' EXHIBIT N

Commonwealth of Virginia
Office of
The Attorney General
Richmond

May 3, 1971

Mrs. Joan S. Mahan, Secretary
State Board of Elections
101 State Finance Building South
Richmond, Virginia 23219

My dear Mrs. Mahan:

I am in receipt of your letter of April 27, 1971, which reads as follows:

> "In consideration of the requirements of Section 5 of the Voting Rights Act of 1965, it will be appreciated if you will render your opinion as to the effective date of Chapter 119 [the amendments to the election laws] and the reapportionment bills, Chapters 116, 118 and 120 which were forwarded to the Attorney General of the United States on March 2, 1971."

As indicated in the ruling to you, issued by this office on March 29, 1971, the Reapportionment Acts became law upon the Governor's signature and also became effective upon his signature, in accordance with the provisions of Article II, Section 6 of the revised Constitution of Virginia. The amendments to the Election Laws, Title 24.1 of the Code of Virginia (1950) contained in Chapter 119 similarly became law upon signature of the Governor and their effective date is as indicated by Section 2 of the Act which reads:

"The amendments to § 24.1-90 shall be effective on and after January one, nineteen hundred seventy-three. The amendments to §§ 24.1-31, 24.1-86, 24.1-227, 24.1-228 and 24.1-229 shall be effective at noon, July one, nineteen hundred seventy-one. An emergency exists and all other provisions of this act are in force from its passage."

However, as indicated in our previous ruling, though an Act may become law and be effective, there still remains the question whether such laws may be implemented.

As we have previously advised, changes in voting procedures and laws may not, after they are effective, be implemented immediately; Virginia being one of the States subject to the 1965 Voting Rights Act, 42 U.S.C. § 1973, et seq. Section 5 of the Voting Rights Act provides that any change in law affecting voting procedures may be enforced by a State if such change has been submitted to the Attorney General of the United States ". . . and the Attorney General has not interposed an objection within sixty days after such submission. . . ."

The four Acts of the General Assembly about which you inquire were personally delivered by the Governor to the Attorney General of the United States on March 2, 1971. They were submitted as required by *Allen* v. *Board of Elections,* 393 U.S. 544, 571, 22 L.ed.2d 1, 89 S.Ct. 817 (1969), in an "unambiguous and recordable manner . . . directly to the Attorney General with a request for his consideration pursuant to the Act." There can be no doubt that such delivery constituted a submission.

Additionally, submitted with the Acts was related information, including maps showing the changed boundaries of the Congressional, Senate and House legislative districts,

in order to enable the Attorney General to understand the changes proposed.

A request for further information was subsequently received from the Department of Justice on or about March 18, 1971, and immediate fulfillment of that request was made four days later (including a weekend). That was immediately followed up the next day, March 23, 1971, by this office personally going to the Department of Justice and advising them in detail as to all changes and reasons for such changes. A subsequent visit to this office was made by the Department of Justice on April 6, 1971, for an additional conference. Numerous phone calls were also made with an attempt always to provide promptly documented responses to all inquiries, including responses to written complaints received by the Department of Justice from various sources, the majority of which complaints, if not all, were received between February 24, 1971, and March 11, 1971.

Pertinent to your inquiry, this office has received no communication from the Attorney General regarding the Acts in question and it has been verified that no letter has been sent by the Attorney General with regard to the submission of March 2, 1971. The sixty day period from that date expired on May 1, 1971, and I am unaware of any provision that would extend the period in question. Consequently the Reapportionment Acts and those revisions of the election laws contained in Chapter 119 which have become effective may now also be implemented; ". . . the Attorney General . . . not interpos[ing] an objection within sixty days after . . . submission. . . ."

The language of the Voting Rights Act, specifically 42 U.S.C. § 1973 (c) cannot be plainer. It is unambiguous and expresses the clear intent that there be a sixty day period provided, within which the Department of Justice is given

power to administratively disapprove any changes in voting procedures. At the expiration of this period so also expires the Attorney General's power to administratively disapprove. Failure to disapprove, however, does not bar any subsequent action to enjoin in a legal proceeding the enforcement of a qualification, standard, practice or procedure affecting the right to vote.

An interpretation of the Act allowing the Attorney General to extend the sixty day period merely by asking for additional information would indefinitely postpone the implementation of any voting procedure. It would further be contra to the Congressional purpose in establishing the sixty day submission period and would destroy certainty with regard to all election processes, creating chaos in the representative form of government mandated by the Constitution of the United States.

Any departure from the mandate of the statute should be only by legislative amendment thereto.

All other changes affecting voting procedures were submitted to the Attorney General on March 23, 1971, and the sixty day period for review of those changes will not expire until May 22, 1971, at which time they may be implemented, there being no objection by the Attorney General.

With kindest regards, I remain

Sincerely yours,

Andrew P. Miller
Attorney General

13-35

DEFENDANTS' EXHIBIT Q

The Library Of Congress
Washington, D. C. 20540

Legislative Reference Service

Legislative History Of Voting Clearance Procedure Authorized By Sections 3(c) And 5 Of The 1965 Voting Rights Act

In his message requesting legislation guaranteeing the right to vote, the President called for the adoption of a proposal which, among other things, would "[p]rohibit the use of new tests and devices wherever they may be used for discriminatory purposes." House Document No. 117, 89th Congress, 1st Session, at page 12. The provision, in effect embargoing new voting requirements in jurisdictions whose existing tests and devices were suspended by virtue of the proposal's administrative triggering mechanism was contained in section 8 of the original Administration bill. (H.R. 6400; S. 1564, 89th Congress, 1st Session.) As introduced, the clearance procedure was exclusively judicial, that is, the affected jurisdiction would have to submit any proposed new or changed voting requirement or procedure to a three-judge court in the District of Columbia before it could be enforced.

> Sec. 8. Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in effect on November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment

brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the fifteenth amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

The Senate Committee on the Judiciary to which the bill had been referred with instructions to report no later than April 9, held hearings on S. 1564 on March 23, 24, 25, 29, 30, 31, and April 1, 2, 5, 1965. The Committee met in executive session on April 6, 6, 8, and 9, 1965 and reported the bill, with amendments in the nature of a substitute, but without recommendation, on April 9, 1965 (Senate Report No. 162, 89th Congress, 1st Session).

The Senate substitute retained the essential features of the President's bill but revamped the proposal in a great many particulars not the least of which was a number of significant changes in the procedure for enforcing a new or changed voting requirement. To begin with, the procedure was authorized in two sections: section 3(c) and section 5. The former had relevance to jurisdictions individually sued by the Attorney General for voting rights denials. The latter, as had been true of former section 8, applied to states and localities which were prohibited from applying test and devices by virtue of their failure to comply with the 50 percent registration or voter participation requirement. Also, the substitute altered the procedure whereby a state or locality in these circumstances could obtain approval necessary to enforce a new or changed requirement. Under the revised bill, the court would have to order the affected jurisdiction, through its chief legal officer, to submit any such new requirement or change to the At-

torney General. If the Attorney General did not object to enforcement of the new or altered voting requirement within 60 days of its submission to him, it would become effective. Conversely, if the Attorney General did make timely objection, the affected jurisdiction had then to resort to the courts in the manner exclusively provided by section 8 of the original proposal.

The language of section 3(c) of the Senate substitute follows:

> If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and shall order that during such period any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be submitted to the Attorney General. If the Attorney General files objection with the Court within sixty days after such qualification; prerequisite, standard, practice or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to him, such qualification, prerequisite, standard, practice, or procedure shall not be enforced unless and until the court finds that it does not have the purpose or will not have the effect of denying or abridging the right to vote on account of race or color; except that neither the court's finding nor the Attorney

General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure.

The language of section 5 of the Senate substitute follows:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose or will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure unless such qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission. Neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Such an action shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code

and any appeal shall lie to the Supreme Court. S. 1564, 89th Congress, 1st Session [Report N. 162].

None of the various parts—3 parts in all—that comprise the Senate report disclose the reason for the change in the clearance procedure or cast any light whatsoever on the sixty day period allowed the Attorney General to scrutinize changed or new requirements or procedures. Part 3 of the report containing the views of twelve members does little more than note the fact that the provisions of former section 8 were now set out at sections 3(c) and 5 and paraphrase the language of both. Thus, with respect to "subsection 3(c)" the report states:

> The substance of section 8 of the bill as introduced has been retained in this subsection and in section 5 of the bill as reported. This provision is intended, by providing for judicial scrutiny of new or changed voting requirements, to insure against the erection of new discriminatory voting barriers by State or political subdivisions which have already been found to have discriminated.
>
> Subsection 3(c) as reported provides that if in a lawsuit brought by the Attorney General the court finds violations of the 15th amendment justifying equitable relief, jurisdiction shall be retained as appropriate and the court shall order that any voting qualification, prerequisite, standard, practice, or procedure different from that in force or effect when the action was brought shall be submitted to the Attorney General. If the Attorney General files an objection with the court within 60 days after such submission to him by the chief legal officer or other appropriate official of the State, the voting qualification, prerequisite, standard,

practice, or procedure in dispute shall not be enforced unless and until the court finds that it does not have the purpose or will not have the effect of denying or abridging the right to vote on account of race or color. Neither the court's finding nor the Attorney General's failure to object is to constitute a bar to a subsequent action, for example one growing out of the applications of practice or procedure which had been found unobjectionable on its face, to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure. Senate Report No. 162, op cit., *supra*, at 20-21.

Later on in the same report, the following remarks are made concerning section 5 of the committee reported bill:

This section deals with attempts by a State or political subdivision with respect to which the prohibitions of section 4 are in effect to alter by statute or administrative acts voting qualifications and procedures in effect on November 1, 1964. The section is a substitute for section 8 of the bill as introduced.

Section 5 now permits a State or political subdivision to enforce a new or changed requirement if it, through its chief legal officer, submits the new requirement or change to the Attorney General and the Attorney General does not interpose objections within 60 days.

If the new qualification, prerequisite, standard, practice, or procedure is not submitted to the Attorney General, or if it is submitted and he interposes an objection, then the State or subdivision which is within section 4(a) will not be able to enforce the new requirements without obtaining a declaratory judgment that such new qualifications, prerequisites, standards, practice, or procedure both do not have the purpose

will not have the effect of denying or abridging rights guaranteed by the 15th amendment. Any such action for declaratory judgment must be brought before a three-judge District Court for the District of Columbia. There is a right of direct appeal to the Supreme Court for the District of Columbia. There is a right of direct appeal to the Supreme Court.

Neither the Attorney General's failure to interpose an objection or the entry of a declaratory judgment under this section will bar any subsequent actions, for example, one growing out of the application of a practice or procedure which had been found unobjectionable on its fact (sic), to enjoin the enactment or enforcement of a new or changed voting qualification, prerequisite, standard, practice, or procedure. *Id.*, at 24.

(The printed record of the Senate hearings are similarly silent. Although there was criticism leveled at the original bill's section 8, nothing said in connection therewith illuminates what motivated the Committee's subsequent revamping of the clearance procedure along the lines noted above. See *Voting Rights,* Hearings before the Committee on the Judiciary, United States Senate, 89th Congress, 1st Session, on S. 1564, at pages 237, 622, 652, 672, 764, 991.)

During the debate opponents of the measure attacked sections 3(c) and 5 as intrusions upon state sovereignty and conferring unlimited power upon the Attorney General. 111 Cong. Rec. 8368, 9794, 10571, 10573, 10745, 10853, 10861, 11023, 11079, 11081, 11091 (1965). Aside from these general attacks, neither provision was subject to the searching kind of inquiry one normally expects of such precedent-making proposals. On April 30, 1965, the Senate leadership put forward an amendment in the nature of a

substitute for the committee recommended substitute. This version, which eventually would be passed by the Senate on May 26, 1965, did not alter the text of section 3(c) or 5 from that contained in the committee recommended substitute. 111 Cong. Rec. 11752 (1965). At no point in the debate did the 60-day period during which the Attorney General might object to the enforcement of new or changed voting requirements or procedures elicit any comments.

Subcommittee No. 5 of the House Committee on the Judiciary held hearings on H.R. 6400 and other proposals to enforce the Fifteenth Amendment on March 18, 19, 23, 24, 29, 30, 31 and April 1, 1965. Upon conclusion of the hearings, the subcommittee met in executive session for 4 days to consider the legislation and thereafter made its recommendations to the Judiciary Committee.

The full Committee on the Judiciary considered the bill for 10 sessions and submitted a report on June 1, 1965. House Report No. 439, 89th Congress, 1st Session. The Committee report changed sections 3(c) and 5 slightly so that rather than requiring the court to order submission of new voting laws to the Attorney General, a moratorium on such laws would go into effect and remain in effect unless cleared by the Attorney General either affirmatively or by failing to interpose an objection within 60 days of its submission to him or in the alternative, by a three-judge court in the District of Columbia.

The language of section 3(c) recommended by the Committee follows:

> If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State of political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred

within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commended shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that the Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

The language of the Committee recommended version of section 5 follows:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, it may institute an action in the United States

District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that the Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

As was the case in the Senate, the Committee report's commentary on these sections was limited to an abbreviated summary of what they would do. Thus, at page 13, appears the statement that "section 3 further authorizes the court to determine the validity of any voting standard or practice which is different from that which was in effect when the suit was instituted." The following statements regarding sections 3(c) and 5 appear in the bill analysis portion of the report:

Subsection 3(c).—This provision is intended, by providing for judicial scrutiny of new or changed voting requirements, to insure against the erection of new and onerous discriminatory voting barriers by State or political subdivisions which have been found to have discriminated.

Subsection 3(c) provided that whenever the Attorney General brings an action against any State or subdivision to enforce the 15th amendment or implementing legislation, and the court has found that violations of the 15th amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court shall retain jurisdiction for such period as it may deem appropriate. During such period no voting qualifications, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the action was brought shall be enforced until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

A provision in this subsection authorizes the enforcement of a new or changed qualification, prerequisite, standard, practice, or procedure without resort to the court if the qualification, prerequisite, standard, practice, or procedure is submitted by the appropriate State or local official to the Attorney General and the Attorney General does not interpose an objection within 60 days of such submission. The Attorney General's failure to object shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Section 5

This section deals with attempts by a State or political subdivision with respect to which the prohibitions of section 4 are in effect to alter by statute or administrative acts voting qualifications and procedures in effect on November 1, 1964.

Section 5 permits a State or political subdivision to enforce a new or changed requirements if it, through its chief legal officer, submits the new requirement or change to the Attorney General and the Attorney General does not interpose objections within 60 days.

If the new qualification, prerequisite, standard, practice, or procedure is not submitted to the Attorney General, or if it is submitted and he interposes an objection, then the State or subdivision which is within section 4(a) will not be able to enforce the new requirements with obtaining a declaratory judgment that such new qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging rights guaranteed by the 15th amendment. Any such action for declatory judgment must be brought before a three-judge District Court for the District of Columbia. There is a right of direct appeal to the Supreme Court.

The Attorney General's failure to interpose an objection will not bar any subsequent actions to enjoin the enactment or enforcement of a new or changed voting qualification, prerequisite, standard, practice, or procedure. *Id.*, at 23-24, 26.

(Save for an observation by former Congressman John Lindsay that the original version's clearance procedure might be modified to enable "the Attorney General ... [to]

agree to amendments . . . [to state election laws and thus obviate] a court proceeding," this aspect of the bill went virtually unnoticed during the House hearing. *Voting Rights.* Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 89th Congress, 1st Session, on H. R. 6400, at page 371. See also pages 59-62, 72, 613, 656, 679, 695. Since the former New York Congressman's statement was made before issuance of the Senate report of the bill, his remarks appear to be quite spontaneous. Of course, the House Committee report recommended clearance procedures similar to those contained in the Senate-passed measure.)

House debate on the measure hardly touched on the clearance procedure, and nothing was said regarding what kind of a submission kicked-off the 60-day limitation during which the Attorney General could object to the enforcement of any changed requirement or procedure. See 111 Cong. Rec. 15648, 15721, 16226 (1965).

The House-passed measure differed from the Senate version approved earlier and a conference was requested in both bodies to iron out these discrepancies. The House version of the clearance procedure which did not require the court to order suspension of any new or changed voting requirement was approved. In the words of the Statement Of The Managers On The Part Of The House:

> The House version [of section 3] respecting the court-imposed moratorium on new voting laws was adopted in lieu of the Senate provision requiring that the court order the submission of new voting laws to the Attorney General.
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> * * *
>
> Section 5 of the House bill is similar to the Senate bill, except that the Senate version provides that a

declaratory judgment approving the use of a new voting requirement will not bar a subsequent lawsuit to enjoin the use of such a requirement. The conference report adopts the House version with a clarifying amendment and with the Senate provision described above. House Report No. 711, 89th Congress, 1st Session, at pages 11 and 12.

/s/ R. J. Celada
Raymond J. Celada
Legislative Attorney
American Law Division

May 17, 1971
Ext. 6012

DEFENDANTS' EXHIBIT R

September 21, 1970

Honorable A. F. Sumner
Attorney General
State of Mississippi
Jackson, Mississippi 39201

Dear Mr. Attorney General:

This is in response to your submission of House Bills 362 and 363 (The "Open Primary" Law) which you submitted on July 23, 1970 to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

Under the Voting Rights Act submitted legislation may be enforced if the Attorney General has not interposed an objection within 60 days after submission. Such an objection is entered when the legislation has the "purpose" or the "effect" of "denying the right to vote on account of race or color."

Since receiving this submission we have carefully examined these acts in light of the statutory standards. We have also solicited additional facts from various knowledgeable sources in Mississippi as to the legislative "purpose" and "effect," and, in fact, are still in the process of receiving and analyzing the considerable information furnished in response to our inquiries.

The problem posed by these enactments is extremely complex. As you know the acts in question eliminate party primaries in most elections and provide for a two-step general election in which all candidates participate with the two highest participating in a run-off election. The Voting Rights Act requires the Attorney General to determine the purpose with which the legislature acted and to project the effect that the statutes will have. With respect to the Open

Primary bills the contention of some is that one purpose of the acts is to deny to independent Negro candidates the opportunity which they have under existing law to run for and be elected to office in the general election with a plurality of the votes cast. While this purpose is not apparent on the face of the acts, there appear to be some indications from the reported statements of proponents and the statements of purpose made with respect to prior similar proposals, that support this view. If this were established as a significant purpose of the acts I believe they would be objectionable under the Voting Rights Act and under applicable judicial precedents.

On the other hand, the facts presently available to us do not conclusively establish that the present acts are afflicted with a racial purpose or that there is no other compelling reason for the State to have adopted them. Moreover, we have been unable to reach the conclusion that the projected effect would be to deprive Negro voters of rights under the Voting Rights Act.

Under the law, the determination of issues such as legislative purpose and effect, involves the detailed consideration of voluminous materials and, if done fairly and comprehensively, an analysis of fact and law that we have simply been unable to complete within the alloted time. I note in passing that the complexities presented by this kind of issue prompted the Attorney General to suggest to Congress that the questions presented by Section 5, could best be resolved in adversary judicial proceedings with a full range of discovery techniques, the power to compel the attendance and testimony of witnesses and production of documents, and the opportunity for deliberate consideration unlimited by arbitrary time restrictions.

Under these circumstances, the Attorney General is not prepared at this time—60 days after receipt of these statutes

—to make any determination of the validity or invalidity of Acts 362 and 363 under the Voting Rights Act. We are, however, continuing to gather information and facts on the issues presented. You will note that the Voting Rights Act specifically provides that the failure of the Attorney General to object shall not "bar a subsequent action to enjoin enforcement of such" acts. Should our subsequent investigation persuade us that the acts in fact violate the 15th Amendment, the Voting Rights Act or other applicable federal legislation, we will take appropriate legal steps to raise the issues in court, or, if litigation is initiated by others to participate therein in an appropriate manner.

I want to make clear that no inference of approval or disapproval is to be drawn from the failure of the Attorney General to object within the statutory period. The fact is that we have been unable to reach a decision within the alloted time on the basis of available evidence. I also point out that the acts in question are not effective until January 1, 1971 and, therefore any person interested in or aggrieved by this legislation has an available opportunity to seek judicial relief.

Finally, you may be interested to know that because of the difficulties experienced in this case in trying to carry out his decision-making responsibilities under the Voting Rights Act, the Attorney General has directed me to study the authority of the Department to conduct formal administrative hearings on such submissions so that a decision can be based on a complete record of sworn testimony and documentary exhibits.

Sincerely,

/s/ Jerris Leonard
Assistant Attorney General
Civil Rights Division

DEFENDANTS' EXHIBIT S

Commonwealth of Virginia
Office of
The Attorney General
Richmond

May 14, 1971

The Honorable Lewis A. McMurran, Jr.
Member, House of Delegates
P. O. Box 85
Newport News, Virginia 23607

My dear Mr. McMurran:

I am in receipt of your letter of this date which reads:

> "Due to the possible uncertainty in press releases of the primary date in Newport News, I have been asked if this would affect the primary being held for Clerk of Courts and for the membership on the Democratic Executive Committee. I have expressed the opinion that these primaries would be held on schedule on June 8th. As I am sure you realize, there was no contest with the incumbents in Newport News for nomination by the Democratic Party for the House of Delegates. I would appreciate your opinion on the correctness of the advice I have given to those inquiries."

I am of the opinion that you are correct in your interpretation. As you know, in addition to various offices for which primaries are being conducted in Newport News as well as various other cities, each county in the Commonwealth is, this year, conducting elections for their sheriffs, Commonwealth's attorneys, treasurers and commissioners

of the revenue. See § 24.1-86 of the Code of Virginia (1950), as amended.

The redistricting plans, now in litigation, concern only Senate and House seats for the General Assembly of Virginia. Since the local offices are not interwoven with legislative districts, the primaries for such offices would not be affected by any court decision voiding in whole or in part either of the legislative redistricting plans. Consequently the primaries for the various local offices would be held as scheduled on June 8th, regardless of the outcome of the pending litigation.

With kindest regards, I remain

Sincerely yours,

Andrew P. Miller
Attorney General

DEFENDANTS' EXHIBIT T

House Joint Resolution No. 98
Recess to June 22, 1971.

Resolved by the House of Delegates, the Senate concurring, That when the two houses adjourn today, they stand in recess until Tuesday, June 22, 1971, at 12 o'clock noon, unless reconvened sooner by the Governor or Speaker of the House of Delegates and President of the Senate.

Agreed to by the House of Delegates
May 11, 1971

Agreed to by the Senate
May 11, 1971

Supreme Court of the United States

No. 71-364, 71-373 and 71-553

Joan S. Mahan, Secretary, State Board of Elections, et al.,

Appellants,

v.

Henry E. Howell, Jr., et al.;

City of Virginia Beach,

Appellant,

v.

Henry E. Howell, Jr., et al.; and

William S. Thornton et al.,

Appellants,

v.

Edgar A. Prichard et al.

APPEALS from the United States District Court for the Eastern District of Virginia.

The statements of jurisdiction in these cases

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FOR REMAINDER OF PAGE

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allotted for oral argument.

Mr. Justice Powell took no part in the consideration or decision of these cases.

April 17, 1972